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ABSTRACT

Presented is the transcript of hearings held in Minnesota and Pennsylvania in 1973 and 1974 before the Senate Subcommittee on the Handicapped of the Committee on Labor and Public Welfare, on S.6, a bill to provide financial assistance to the states for improved exceptional educational programs. Reported are statements by committee members (including Senators W. Mondale and H. Humphrey), special educators (such as professor M. Reynolds), directors of special programs (such as R. Scott, director of special education for Pittsburgh public schools), and local governmental officials. Additional information such as articles, publications, and communications dealing with financial issues in special education are also provided, as well as an appendix presenting guidelines from North and South Dakota and Wisconsin. (CL)

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EDUCATION FOR ALL HANDICAPPED CHILDREN, 1973-74

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON

LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 6

TO PROVIDE FINANCIAL ASSISTANCE TO THE STATES FOR IMPROVED EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN

OCTOBER 19, 1973
ST. PAUL, MINN.

MARCH 18, 1974
HARRISBURG, PA.

PART 3

EC 071 207

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EDUCATION & WELFARE
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EDUCATION FOR ALL HANDICAPPED CHILDREN, 1973–74

FRIDAY, OCTOBER 19, 1973

U.S. Senate,
Subcommittee on the Handicapped
of the Committee on Labor and Public Works,
St. Paul, Minn.

The subcommittee met, pursuant to call, at 9:05 a.m., in room 15, professional staff members; and Roy H. Millenson, minority professional staff member.

Present: Senator Mondale.

Also present: Patria Forsythe, Ellen Hoffman, and Lisa Walker, professional staff members; and Roy H. Millenson, minority professional staff member.

Senator Mondale. I am pleased to call to order this hearing of the U.S. Senate Subcommittee on the Handicapped on S. 6, the Education for All Handicapped Children Act. This hearing is one of a series being held across the country to receive testimony on this important legislation. I am conducting the hearing at the request of Senator Harrison Williams, the author of the bill and chairman of the Senate Labor and Public Welfare Committee, and of Senator Jennings Randolph, chairman of this subcommittee and a major cosponsor of the bill.

As a member of the Senate Subcommittees on the Handicapped and on Education, and chairman of the Subcommittee on Children and Youth, I am encouraged to see national attention focused on the critical problem of educating the some 7 million handicapped children in this country. Statistics show that nearly 60 percent of these children are not receiving an education that meets their needs.

For many years handicapped children have been placed in institutions, or segregated in schools and classes, or left to sit at home, where they have not received the educational opportunity which is their right under the law.

Such policies, in addition to the obvious damage suffered by the child, often have had the effect of placing impossible emotional and financial burdens on families.

Recent court decisions, however, have made it clearer than ever that we have not only a moral but also a legal obligation to provide the opportunity for every handicapped citizen to reach his or her highest educational potential.

An important provision of the bill before us today would require that every State have in effect a policy stating the right of all handicapped children to "a free appropriate public education," and also require that the States develop specific plans for implementing that policy by 1976. The bill would also insure that each handicapped child be treated as an individual with unique strengths and weaknesses, and not as a member of a category of children all presumed to have the same needs.

One of the major barriers to providing quality education for all handicapped children has been the cost. There is no question that it is more expensive to meet the educational needs of a child who is blind or deaf or mentally retarded or who has learning problems than to meet the needs of a child without these problems. A recent study shows that the extra cost per child ranges from at least $400 to $800 annually.

Even States like Minnesota, where there is a public commitment to providing opportunities to the handicapped, where programs like special education and vocational rehabilitation have received a high priority, do not have enough money to meet the needs.

In the past the Federal role in supporting special education has been quite insignificant. An estimated $3.5 billion is being spent by the States on education of the handicapped. The Federal contribution, however, is only $250 million.

The bill before us today represents a significant step toward providing the necessary financial assistance. Specifically, S. 6 would pay to each State that meets the conditions I described earlier 75 percent of the excess cost of educating a handicapped child. For example, if the average cost of educating a child in a given State is $1,000, and the cost of educating a handicapped child is $1,500, the States would receive 75 percent of that difference, or $350, toward meeting that cost.

The purpose of today's hearing is to seek the comments and suggestions of parents, legislators, education experts, and others from the Midwest region about S. 6. The subcommittee is here to listen to the testimony of persons who are most familiar with the needs of handicapped children and to determine whether this bill will, in fact, meet those needs.

In closing, I would like to associate myself with the words of Senator Williams when he introduced this bill in the Senate:

> We must remember that these are children whose needs can be met and who can be freed from the nuisances that are their disabilities. They are children who will go through the same pains and sufferings of growing up as do your children and mine. Yet the answers they often receive are not answers that we would give to our own children. They are not answers which our own children would accept, nor are they answers of which we can be proud in this nation today.

Before we begin with our first witness, I would like to read into the record the statements of Senator Randolph, chairman of the subcommittee; Senator Williams, chairman of the full committee; Senator Humphrey, a strong supporter in this area; and Congressman Joseph Karth.

[The statement of Senator Randolph follows:]

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA, AND CHAIRMAN, SENATE SUBCOMMITTEE ON THE HANDICAPPED

Senator RANDOLPH. I genuinely regret that it will not be possible for me to be in Minnesota for the hearing on S. 6, the Education for All Handicapped Children Act. I am serving as a member of the U.S. Delegation to the North Atlantic Assembly in Ankara, Turkey, and must leave the country on Thursday, October 18, in order to fulfill this important responsibility.

The members of the Subcommittee on the Handicapped, which I have the responsibility of chairing, are vitally interested in and dedicated to the right of our handicapped children to educational opportunity. The Senate has already passed S. 986, the Education of the Handicapped Amendments of 1973, which extends the present legislation. We are awaiting action by the Education and Labor Committee of the House of Representatives. This Nation's most precious resource is its children, and it is my hope that S. 896 and S. 6 together will provide sound educational programs for all handicapped children in the future.

I express gratification that my good friend and colleague, the able Senator from Minnesota, Walter Mondale, is chairing these hearings. As a member of the Subcommittee on the Handicapped and as chairman of the Subcommittee on Children and Youth, Senator Mondale is sensitive and responsive to the needs of our Nation's children. He is an outstanding leader in this vital field, and it is a privilege to serve and work with him on these subcommittees and in the U.S. Senate.

[The statement of Senator Williams follows:]

STATEMENT OF HON. HARRISON A. WILLIAMS, JR., A U.S. SENATOR FROM THE STATE OF NEW JERSEY, AND CHAIRMAN, SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

Senator WILLIAMS. I am pleased to take this opportunity to welcome all of you to this hearing this morning, and I am especially pleased that Senator Mondale is chairing this hearing in St. Paul. Senator Mondale has been a strong and forceful leader in the Committee on Labor and Public Welfare, and I know that his strong advocacy for the rights and the problems of children of this Nation and the problems of American families is particularly important for the legislation we are considering today.

This legislation is especially directed to the problems of an important part of the Nation's children and families—the problems of providing the right to education and equal opportunity to some 7 million handicapped children. In chairing hearings of this subcommittee in other regions of this country—the South, the Northeastern States, and the Atlantic seaboard States—I have found a need which is almost universal for the assistance provided by this legislation.

Exclusion from school, institutionalization, the lack of appropriate services to provide attention to the individual child's need—indeed, the denial of equal rights by a society which proclaims liberty and justice for all of its people—are echoes which the subcommittee has found throughout all of its hearings. I know that the testimony provided today will greatly help us in our quest to secure the right to education for all handicapped children, and I send my sincere thanks to all of you who will help us in this effort.

Thank you.

[The statement of Senator Humphrey follows:]

STATEMENT OF HON. HUBERT H. HUMPHREY, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator Humphrey. I commend the action of the Senate Labor and Public Welfare Committee in conducting regional hearings on legislation to improve educational services for handicapped children—in particular, S. 6, the Education for All Handicapped Children Act. As a cosponsor of this bill, I am concerned that this serious issue receive the public attention which it fully merits. And I am hopeful that the hearings you will chair in the State capitol in St. Paul, Minn., on October 19, 1973, will reflect strong public participation, emphasizing the vital need for long overdue Federal assistance and comprehensive State and local programs to affirm the rights of all children to obtain the best possible education.

I believe a profound injustice is suffered by 4½ million handicapped children of school age who are excluded from public schools in America. While important accomplishments in this area have been achieved in Minnesota, much more can and must be done. This is clearly indicated in the statistical estimate of the Department of Health, Education, and Welfare that while 70,423 handicapped children and youth, up to age 21, were served in our State during 1971–72, another 52,242 children received no services.

S. 6 provides for important Federal financial assistance incentives to the States for improved educational services for handicapped children. And under S. 896, the education of the handicapped amendments, passed by the Senate on June 25, 1973, the provision of full educational opportunity is made a firm goal of Federal assistance, under the requirement that State plans, to be effective by June 30, 1975, must provide for the identification and evaluation of all handicapped children and for followup programs of affirmative action on behalf of these children.

I have urged that final action be accomplished without further delay on this legislation, which is in line with a provision of my bill, S. 1817, the National Education Investment Act of 1973.

The fact is that inadequate efforts by the States on behalf of handicapped children have been met with indifference by the executive branch of the Federal Government, which has sharply reduced appropriations requests for grants to the States under the Education of the Handicapped Act. However, there are presently pending more than 20 "right to education" suits in Federal district courts on behalf of handicapped children. Therefore, it is clear that the time for decisive action is at hand. We are confronting what has rightly been called taxation without service. Parents pay taxes, but cannot obtain public education services for thier handicapped children.

Too often, parents confront long waiting lists in seeking counseling services for their handicapped children; too often, handicapped children are denied access to public schools, whether because of the lack of adequate professional trained staff or because these children are simply viewed as an extra burden; and too often, the children are left with no alternative to being sent to an institution or to being shut up in their homes, because of the limited availability and higher costs of private schooling.

We know that States and local school districts require significant financial assistance to provide special educational services for handicapped children, and it is incumbent upon Congress to enact legislation to fulfill this requirement.

However, I believe that the implementation of State and local plans for the provision of such services must also be accelerated by firm pressure. It was for this reason that I introduced S. 2095 on June 28, 1973, which would provide that the future receipt by local educational agencies of Federal financial assistance under programs made contingent upon their provision of educational services to all handicapped children at levels of expenditure at least equal to expenditures for other children. The details of educational services for handicapped children would be determined in light of local needs, but educational opportunity will be required for every child.

I am hopeful that the Senate Labor and Public Welfare Committee will be able to take action in the near future on the further legislative measures that are clearly required if all children are to have the right to participate in educational excellence. I appreciate this opportunity to have my views incorporated in the legislative hearing record.

Thank you.

[The statement of Congressman Karth follows:]

STATEMENT OF HON. JOSEPH E. KARTH, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Congressman KARTH. Thank you, Mr. Chairman, for the opportunity to participate in these hearings on S. 6, the Education for all Handicapped Children Act. I am pleased to testify in support of this bill and its aims and purposes.

It is an encouraging sign of the times that we can propose legislation to provide Federal financial assistance to the States for improved education for handicapped children. For it was not that long ago when this subject was a difficult one to even discuss, much less propose action on. The combination of public ignorance and what can only be called public scorn for children who were physically handicapped, mentally retarded, or otherwise impaired kept this subject in the same place as many of its victims—behind a closed door.

When I was preparing this testimony I recalled seeing a John Wayne movie that came out a short time ago. In that movie one of the youngsters on a cattle drive with Wayne had a speech impairment—he stammered. In one scene Wayne berated the child in such a manner that within some 30 seconds the child "lost" his impairment.

The scene was both cruel and inaccurate and demonstrated how far we have come. Of course it was inaccurate since it portrayed a child's speech impediment as a willful act of the child himself—and cruel because it showed that the problem could be cured only if one verbally assaulted the child to the point where he started talking "right."

And how far have we come? We think today that this kind of ignorance is a figment of the past and preserved only in movies. Yet, even today we read stories of parents who are so ashamed of a less than perfect child that the child is shut up—hidden, forgotten, and ignored.

Mr. Chairman, it is, of course, essential that we assist those thousands of children whose parents want help but cannot afford it. We must also reach out to those parents who do not seek the help their child needs due to fear or misgiving.

We are beginning to expose this problem. Now we must work for its remedy through legislation such as S. 6.

There are those who say that the price tag for the remedy is too high, or that the responsibility is not that of the Government.

Surely, the first argument, to use technical terms, is hardly cost-effective. For how are we to seriously compare the cost of long-term custodial care that is required of a mentally retarded child when that cost could be eliminated by paying for the education and training to make the child a contributing adult member of our society.

We know that can be done. Right here in the Twin Cities at the Occupational Training Center we have seen, vividly, what can be done for mentally, physically and emotionally handicapped people.

And how can one compare the cost—and the loss of our country's greatest resource—people—should they be ignored or wasted because we know that private resources are limited.

To illustrate, I recall not long ago discussing this subject with one of my assistants. He is a member of the local Jaycee chapter in his community where he lives in Virginia. We talked about the Jaycee's nationwide efforts to help the mentally retarded. As you well know, Mr. Chairman, that the Jaycees, with the help of a great many people, put on "Special Olympics" each year for exceptional children. An olympics where there never is a loser.

And in many States there are other projects for the mentally retarded. In Virginia, for example, the Jaycees sell apple butter each year to raise funds for a camp they have established for retarded children. We discussed this private assistance concept, and the great work that is being done. At this point my aide commented that each year some children must be turned away due to lack of funds, or room at the camp.

He then said, "I think we could sell a jar of apple butter to every person in Virginia and there would still be children we could not help."

This is but one example of the limitations to private assistance to the handicapped.

In addition to the limitations, we are now seeing the courts rule that handicapped children have the same rights as non-handicapped youth and that an education must be provided in equal measure to them. And the States are turning to their Federal Government for help.

Mr. Chairman, I could recount numerous statistics—but I know that these are already a part of the committee's record. What is more important, though, than statistics is the human factor—the faces that could smile with the proper care, and the human lives that could be made productive with the necessary education.

I think we could all pause for a moment and think of how we would feel if we were not self-sufficient and could not, for example, dress ourselves. What if we knew that we could be taught how to perform this task, but that we would not receive that training because someone said it cost too much or there was no one to pay.

By passing this bill we could stop turning away those who need this help and education. This is a responsibility that legally, and morally we must confront.

Thank you.

Senator MONDALE. We are very honored this morning to have as our first witness Hon. Wendell Anderson, Governor of Minnesota.

Governor Anderson.

STATEMENT OF HON. WENDELL ANDERSON, GOVERNOR OF MINNESOTA

Governor ANDERSON. I'd like to welcome you, Senator Mondale, to our State.

Senator MONDALE. Thank you. I am very glad to be here.

Governor ANDERSON. I would like to assure you that we will extend the same kind of hospitality that we have received here today. It is good of you to come.

As you are well aware, the historic educational event of the 1950's and perhaps of this century was the Supreme Court decision in *Brown v. The Board of Education* in 1954.

The Supreme Court of the United States ruled that segregated schools were not schools of equal educational opportunity. It was a dramatic and significant step that has laid the groundwork for major advancement of opportunity in the years since 1954.

But as we look back on the effects of that decision, it is clear that this was only the beginning. There is more to be done.

For many young people in poor communities, *Brown* v. *The Board of Education* meant only that they could leave one totally inadequate segregated school and attend another totally inadequate integrated school. They had a choice of two inadequate opportunities. Discrimination was, and is, more than racial in our country. It is also economic.

Senator Mondale, I remember the day that the Supreme Court ruled against Mr. Rodriguez in the famous *Texas* case. I watched Mr. Rodriguez respond to newsmen on television that night.

He is a Mexican-American. In the district where he lives and his children go to school, they have very, very modest little homes where the real estate taxes are almost confiscatory. Yet they raise only $26 per year per student from those taxes.

Across town in the affluent area—the Edina of his home town—real estate taxes are more modest. But they are raising $500 and $600 and $800 per student.

Mr. Rodriguez has three or four children. All of them want to go to school and be doctors or lawyers or dentists. One of them wants to be a priest. But Mr. Rodriguez knew that unless he could crack that school finance system that raised very little money in his area and a lot of money across town in the wealthy area, that wasn't going to happen.

So he sued. He won in district court, but the Supreme Court ruled against him. That's a tragedy.

As you well know, Senator Mondale, in 1971 we mounted a bipartisan effort in Minnesota to reform our own school finance system, which also depended too heavily on the local property tax.

It was a long, hard struggle. We had to raise taxes on the State level to do it. But we turned school finance around in Minnesota by going from 43 percent State financing to 70 percent.

That reform has made it possible to double our State aids to public school districts from $650 million a biennium to $1.3 billion during the time I have been in office.

A great deal of State money that doesn't come from local property taxes is going into our schools on a more equitable basis.

We have taken steps to keep from discriminating against our children because they may live in a poor school district.

You and your committee also know that there is another way in which the schools of the Nation discriminate against our children as well, by not providing adequate education for the handicapped.

In 1919, the Wisconsin Supreme Court agreed that a mentally, normal, blind child could be barred from school because his handicap had a "depressing and nauseating effect" on teachers and children.

But in 1971, a U.S. district court ordered Pennsylvania to educate all retarded children between 4 and 21, regardless of cost.

One out of 10 of our homes in Minnesota and across the Nation is the home of a handicapped child.

The Pennsylvania case was the first of 34 Right to Education cases in 21 States. Similar decisions in Washington, D.C., and New Orleans have extended the Pennsylvania precedent to include all mentally and physically handicapped youngsters.

Perhaps the Supreme Court will destroy the hopes of these children and their parents as it did the hopes of Mr. Rodriguez. But the reality of discrimination will still be there.

In Minnesota, partly because of the school finance reforms, our State department of education estimates that we are now providing needed special instruction for about 80 percent of our handicapped children.

Our State law provides that:

> Every district and unorganized territory shall provide special instruction and services for handicapped children of school age who are residents of the district and who are handicapped . . .

Our definition of the handicapped includes all of those who are included in S. 6, the bill that is before us this morning. It also includes delinquents, because in Minnesota we believe that they are handicapped as well.

Last January in my budget message to the legislature I recommended an increase of more than 150 percent in funds for teaching the trainable mentally retarded in Minnesota.

The legislature agreed. The cost was more than $2.3 million of additional funds, a total of $4.6 million to educate 4,200 young people. But the contribution to those young lives is immeasurable.

They are being helped to learn the most basic tasks of living. Minnesota cared enough to teach them how to care for themselves, how to work with others, how to begin to learn.

We are now providing more than custodial care. We are providing light for the darkness in which these young people exist. We are opening up the future, at least a little bit, for seriously retarded children in Minnesota.

Our legislature also increased reimbursement of special education salary costs and reimbursement for children in residential centers at a cost of $2.2 million for the biennium.

We eliminated the ceiling on transportation aids for education of the handicapped, so that more funds are available for bringing these children to schools with special facilities for their education.

We reimburse our schools for special supply and expense costs for instruction of the handicapped.

Overall, this last legislature increased appropriations for special education of the handicapped by 33 percent to $53.4 million for the current 2 years.

Our Minnesota programs served 77,600 handicapped students last year. The number and the percentage of needs served grows each year.

Our 1973 legislature took two other actions as well that are important to handicapped children and adults in our State.

We amended our human rights legislation to extend protection to the handicapped in employment, housing, public accommodations, and public services as well as education. We know that handicapped people must be able to use their educations once they have them.

We also created a Commission for the Handicapped to bring together the various fragmented efforts in the State.

The commission will make recommendations, facilitate cooperation between departments, evaluate the adequacy of State programs, and act as a source of information for the public. The commission knows first hand of the problems and needs of the handicapped. Most of the members are handicapped, parents and guardians of the handicapped, or members of organizations providing services to the handicapped.

So we expect to make further progress with our programs for the handicapped.

We would like to do more, and the Nation must do much more.

While we estimate our percentage at 80 percent of needs served, your own analysis for 1971–72 puts Minnesota at 57 percent. Even if your figures are as low for other States as they are for Minnesota, the situation in some of these States is still deplorable. They show 10 percent of handicapped children served in Arkansas, 14 percent in Mississippi, 16 percent in Oklahoma and New Mexico, 19 percent in West Virginia, 20 percent in Alabama. We certainly have no right to be complacent in Minnesota, but it is very clear from those statistics that there is a national need for assistance.

As we look at this proposed Federal legislation, we can support it with enthusiasm. It is entirely appropriate for the Federal Government to provide 75 percent of the special additional costs of teaching the handicapped.

Your estimate, again based on 1971–72, predicts $47 million per year in Federal funds for Minnesota under this proposed legislation. Because of the steps we have taken in Minnesota, I suspect that estimate is also low. We certainly can use the help.

And so can the rest of the Nation.

I don't doubt our need for a strong national defense. But as a Nation we simply must spend less of our wealth on weapons and more on people.

In my inaugural address in 1971 I said that the highest test of a civilized society is the treatment it affords its disadvantaged citizens. We designed our 1973 State budget with that in mind. And our legislature acted with that in mind.

I hope the Congress will also do that.

But I have one more comment to make.

Senator Mondale, I've heard you say a number of times that the Congress authorizes dreams and appropriates peanuts in the human programs area.

Minnesota does not need an empty authorization for Federal assistance for the education of the handicapped. Programs don't work without funds, and we know in Minnesota that special education is expensive.

We appreciate your concern and your commitment to the handicapped, and now I hope you'll send us some money.

Senator MONDALE. Thank you very much, Governor, for a most useful statement.

Whether Minnesota is serving 57 percent or 80 percent, that, I guess, is just as large an amount. Our figure shows only 17 States in the Union serving more than 50 percent of the handicapped and, as you point out, there are many States in which all of the handicapped children are without special services and, of course, that doesn't help us evaluate what they mean by services. Some of those services are hardly worthy of the name.

I would like to simply explore for a moment your last point because this is something that has bothered me a great deal. Generally in education and in the human fields we will authorize a strong program and then the American public reads about it and says, "Boy, we are really moving on in this field, $10 million or $100 million or whatever is the program," and then a year later they look around and say, "Where is the program? What's happened here?" Usually what has happened is that in the appropriations process we have appropriated either nothing or very little to accomplish the legislative objective which we earlier established in the authorization legislation.

As a matter of fact, last year we made an analysis and the average appropriation for education was, I believe, a third of the authorization compared to defense, which often is over 100 percent. I have never figured out how we can appropriate more than we have authorized, but we have done that in space and so on.

What kind of difficulties does this create for you in developing a budget and in trying to handle the straight programs when the Federal Government proceeds in this way?

Governor **Anderson**. First of all, Senator, it is absolutely critical that the bill under discussion be passed and become law and we have the funds, but even with that program, the regulations keep changing so that we do not know from month to month how much we can count on. We have members of the legislature here who have served on the House Appropriations Committee. I know in 1973 it was in a state of flux and it was impossible to intelligently plan for the next 3 years.

I might touch on something very sensitive. In the last 10 or 12 years, in the last six legislative sessions, taxes were raised every single session, regardless of which political party was in control. During that same period of time the Federal Government on five separate occasions has reduced taxes. The very fact that the Congress reduced taxes doesn't mean that the people of America have a small tax burden. It simply means that we are putting the emhpasis on local taxes. When Congress reduces taxes, really, they don't save anybody the burden of paying the tax, they just transfer the burden from one level to another. This is true in the north, south, east, and west.

I appreciate the opportunity of having appeared here today. It is a unique time for me. I have never appeared for a minority of one before except at home.

Senator **Mondale**. You have done very well.

There is one thing you mentioned, and people don't really notice it, but there has been a mammoth increase in the payroll tax. And in this tax there are no deductions for the cost of raising children, for health costs, for charitable contributions, no marital share so you can help split the taxes to help raise a family, no low-income exceptions so that the poorest Americans can be excused from part of it.

So the one tax that has increased dramatically works in just the opposite way in the sense of making it less possible for families to care for their children.

Thank you very much, Governor, for being with us.

[The prepared statement of Governor Anderson follows:]

REMARKS OF GOVERNOR WENDELL R. ANDERSON

SENATE SUBCOMMITTEE ON THE HANDICAPPED

ST. PAUL, MINNESOTA

OCTOBER 19, 1973

Thank you, Senator Mondale.

As you are well aware, the historic educational event of the 1950's and perhaps of this century, was the supreme court decision in Brown versus The Board of Education in 1954.

The Supreme Court of the United States ruled that segregated schools were not schools of equal educational opportunity. It was a dramatic and significant step that has laid the groundwork for major advancement of opportunity in the years since 1954.

But as we look back on the effects of that decision, it is clear that this was only the beginning. There is more to be done.

For many young people in poor communities, Brown versus The Board of Education meant only that they could leave one totally inadequate segregated school and attend another totally inadequate integrated school. They had a choice of two inadequate opportunities. Discrimination was, and is, more than racial in our country. It is also economic.

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But I have one more comment to make.

Senator Mondale, I've heard you say a number of times that the Congress authorizes dreams and appropriates peanuts in the human programs area.

Minnesota does not need an empty authorization for federal assistance for the education of the handicapped. Programs don't work without funds, and we know in Minnesota that special education is expensive.

We need the money, too.

Thank you.

Senator MONDALE. I should briefly describe the nature of these hearings. The chairman of the Senate Labor and Public Welfare Committee, Pete Williams, and the chairman of the Subcommittee on the Handicapped, Jennings Randolph, have asked those of us who are serving on both committees to hold hearings such as we are holding this morning to develop the case for a Federal thrust in the area of the handicapped; to analyze it from the standpoint of the State of Minnesota and other States in the Midwest and those who are working in this same field in the private sector so that we can develop separate hearings which give us the national focus on the need for legislation in this field.

We are most grateful to each of you for being here and for the witnesses.

I introduced several persons but I would like to introduce the members of the legislature who have joined us:

Senator Jerry Hughes is with us, a State senator on the senate education committee; Representative Joe Graba, representing the house subcommittee on educational financing; Mr. Jim Beaver; and Bob Bell and Kent Nelson.

Our next witnesses consist of a panel of Minnesota legislators: Bob Bell, house education committee; Joe Graba, and Jerry Hughes.

STATEMENT OF JOE GRABA, CHAIRMAN, HOUSE SUBCOMMITTEE ON STATE AIDS TO EDUCATION, ACCOMPANIED BY JEROME HUGHES, CHAIRMAN OF THE SENATE SUBCOMMITTEE ON SPECIAL EDUCATION; AND BOB BELL, HOUSE EDUCATION COMMITTEE, MEMBERS OF THE STATE LEGISLATURE OF MINNESOTA

Mr. GRABA. Thank you, Senator Mondale.

My name is Joe Graba, chairman of the house subcommittee on State aids to education, and I am happy to have this opportunity to testify before you.

Senator, let me say at the outset that I think few efforts on the part of Government demonstrate our humaneness in our society to the extent that our efforts in aiding handicapped children do. We in Minnesota have made great progress in providing equal educational opportunity for all children, including the handicapped. Obviously, this has created a substantial burden on both State and local resources. This burden is particularly great in the area of the handicapped. For this reason, we welcome the possibility of greater Federal participation at the level proposed in Senate bill 6.

In order to give you a better idea of where the proposed Federal aid could be of help in our State, I propose to concentrate in my testimony on the present system of financing the education of handicapped children in the State of Minnesota.

By legislative mandate, each school district in Minnesota is required to provide an education to all handicapped children having a residence within that school district. As of 1971, this mandate includes the trainable mentally retarded. As of the 1973–74 school year, approximately 75,000 of an estimated 90,000 handicapped children are being served. Our statutory definition of handicapped coincides with the definition in Senate bill 6 except for the fact that we also include in our definition the delinquent and pregnant children.

State participation in the education of these children falls into two general categories. The first category is our foundation aid formula, which is paid on a per-pupil-unit basis to all school districts for the instruction of all children. We use a weighting system for determining the pupil units in each particular school district. Every kindergarten child is computed as five-tenths of a pupil unit. Children in elementary schools, grades 1 through 6, are computed as one pupil unit, and children in grades 7 through 12 are computed at 1.4 pupil units. The State foundation aid formula is aimed at guaranteeing that every school district will have a base amount of dollars to educate each pupil unit that it has within its district. For the school year 1973–74, that base figure is $788. For 1974–75, that figure is $820. This foundation aid applies to all children within the school district, including the handicapped.

In addition to the foundation aid, the State pays special aids for the education of handicapped children. These aids are paid in the form of reimbursement aids. The State reimburses the school districts for 60 percent of the salaries of essential personnel up to $5,600 for a school year, and a pro rata payment for part-time or summer school personnel. The State also reimburses the districts for 50 percent of the cost of supplies and equipment up to an average of $50 per handicapped child per school year. In addition, the State reimburses the resident district of a child for up to 60 percent of the instructional cost charged to it for a child placed in a residential facility, be it a public school facility for the low-incidence, multiple, or extremely handicapped child, a State residential school outside the State, or a State institution.

In the 1973 legislative session, the State greatly increased its participation in the transportation costs of these handicapped children. In 1974–75, this transportation aid will amount to the difference between the per-pupil income from a 1-mill levy in the school district and the average current per-pupil cost of such transportation. In the 1974–75 school year, this transportation aid will be permitted for transportation of handicapped children who cannot ride on a regular schoolbus, transportation of handicapped children between home and school, transportation to daytime activity centers, and, when necessary, board and lodging for nonresident handicapped pupils in a district which runs special classes for these children.

In order to facilitate the education of these children, in many parts of rural Minnesota school districts have combined together in what we refer to as special educational co-ops. These co-ops are designed to provide educational services to children in school districts that could not efficiently provide such services on their own. In this case, these aids are channeled through the individual school districts into the cooperative for the operation of the co-op.

As Governor Anderson has indicated, these aids amount to a considerable fiscal commitment on the part of the State of Minnesota. We believe that we are doing a respectable job in this area in the State of Minnesota. We know that we are not doing everything that can be done, and for this reason we applaud your efforts, Senator Mondale, to increase the Federal Government's participation in this very vital area of education.

Thank you again.

Senator MONDALE. Thank you.

[The prepared statement of Mr. Graba follows:]

PREPARED STATEMENT OF REPRESENTATIVE JOE GRABA, MEMBER OF THE HOUSE OF REPRESENTATIVES, STATE OF MINNESOTA

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Thank you again.

Senator MONDALE. Why don't we complete the panel now, and we will come back for questions.

Senator Hughes.

STATEMENT OF SENATOR JEROME M. HUGHES, STATE SENATOR OF MINNESOTA, CHAIRMAN, SENATE SUBCOMMITTEE ON SPECIAL EDUCATION

Dr. HUGHES. I am Jerome Hughes, State senator and chairman of the senate education committee. I am very pleased that you have come here to the State to take testimony with regard to the programs for handicapped children. We appreciate the efforts that you are presently giving in the National Senate to social programs for handicapped people.

In Minnesota, we have long recognized that a financial investment in education can produce a financial savings in some other area of State costs in the future. In the area of handicapped children, or individuals needing special educational services, we can easily see that for every child that we serve educationally we have developed a more self-sufficient individual who will need fewer State services. For every child that we can move from a State hospital into a school, we have accomplished two important things: First, we have helped an individual become a part of our community; second, we have experienced a cost savings in the budget for hospital services. But we have caused one additional problem, we have increased our educational costs.

In my opinion, this makes sense. We are spending money to help people to learn to better help themselves. Through education for handicapped persons, especially vocational programs for handicapped individuals and vocational rehabilitation, we develop people who are self-sufficient wage earners providing income to the government rather than costs. As you see readily, spending for education, particularly special education for the handicapped, is an economic decision. Minnesota has made a strong commitment to education, both financially and philosophically. Our biennial education budget of $1.67 billion is 48 percent of our general fund.

We have legislation which mandates that school districts provide services to all handicapped students, including the trainable mentally retarded. The State provided nearly $40 million in 1971–73 to fund 50 percent of the cost of these services. However, this amount was over $600,000 short. For the 1973–75 biennium, the State appropriation has been increased to $53.4 million, an increase of $13.4 million. With this level of funding, we still fall short of providing basic educational services to all handicapped children as our law requires. We estimate that there are 100,000 children to be served and that we are serving 70 to 75 percent with this level of funding.

Within the trainable mentally retarded area, before our 1971 legislation mandating education for the trainable mentally retarded, we were serving about 1,800 trainable students. We now have increased that to 3,500 students and estimate that there are about 1,000 more to be served.

This provides you with some idea of the need and the effort being made in Minnesota to meet the need. We have made the commitment to meet the basic needs, but even this need has not been fully met.

Funds are needed, both at the State level and by local school districts, to provide additional services to help these students become self-sufficient wage earners. It is the higher level of educational service that produces this level of results. Service needs that we particularly experience in Minnesota are the support services of physical and occupational therapy for severely handicapped; a lack of vocational programs at the secondary level; and the very important need for early identification and preschool services, an area where we have barely made a beginning.

We recognize that serving these students at a younger age will provide better results. We recognize that for each dollar we spend now, the earlier we spend, the sooner we will reap benefits in the future.

In Minnesota our taxes are high; our commitment is large; we are rated among the very top of the States in quality of education; but we still are not beginning to do the job in special education services.

A level of Federal commitment that would supplement or even equal what we are doing in Minnesota is becoming necessary to meet the need. We are prepared in Minnesota to use a Federal contribution to the fullest in a most efficient manner. And we believe we will reap economic and social benefits far beyond our investment.

Thank you.

Senator MONDALE. Thank you very much for your thoughts and for your very helpful statement.

[The prepared statement of Dr. Hughes follows:]

TESTIMONY OF DR. JEROME M. HUGHES
State Senator, Minnesota

Concerning S. 6
Before United States Senate
Subcommittee on the Handicapped

October 19, 1973

In Minnesota, we have long recognized that a financial investment in education can produce a financial savings in some other area of state costs in the future. In the area of handicapped children, or individuals needing special educational services, we can easily see that for every child that we serve educationally we have developed a more self-sufficient individual who will need fewer state services. For every child that we can move from a state hospital into a school we have accomplished two important things: First, we have helped an individual become a part of our community; second, we have experienced a cost savings in the budget for hospital services. But we have caused one additional problem -- we have increased our educational costs.

In my opinion, this makes sense. We are spending money to help people who learn to better help themselves. Through education for handicapped persons, especially vocational programs for handicapped and vocational rehabilitation, we develop people who are self-sufficient wage earners providing income to the government rather than costs. As you can readily see, spending for education, particularly special education for the handicapped, is an economic decision. Minnesota has made a strong commitment to education -- both financially and philosophically. (Our biennial education budget of $1.67 billion is 48% of our general fund.)

We have legislation which mandates that school districts provide services to all handicapped students, including the trainable mentally retarded. The state provided nearly $40 million in 1971-73 to fund 50% of the cost of these services. However, this amount was over $600,000 short. For the 1973-75 biennium, the state appropriation has been increased to $53.4 million -- an increase of $13.4 million. With this level of funding, we still fall short of providing basic educational services to all handicapped children as our law requires. We estimate that there are 100,000 children to be served and that we are serving 70 - 75% with this level of funding.

Within the trainable mentally retarded area, before our 1971 legislation mandating education for the trainable mentally retarded, we were serving about 1800 TMR students. We now have increased to 3500 students and estimate that there are about 1000 more to be served.

This provides you with some idea of the need and the effort being made in Minnesota to meet the need. We have made the commitment to meet the basic need, but even this need has not been fully met.

Funds are needed, both at the state level and by local school districts, to provide additional services to help these students become self-sufficient wage-earners. It is the higher level of educational service that produces this level of results.

Service needs that we particularly experience in Minnesota are the support services of physical and occupational therapy for severely handicapped; a lack of vocational programs at the secondary level; and the very important need for early identification and pre-school services -- an area where we have barely made a beginning.

We recognize that serving these students at a younger age will provide better results. We recognize that for each dollar we spend now, we will reap benefits in the future.

In Minnesota our taxes are high; our commitment is large; we are rated among the very top of the states in quality of education; but we still are not beginning to do the job in special education services.

A level of Federal commitment that would supplement or even equal what we are doing in Minnesota is becoming necessary to meet the need. We are prepared in Minnesota to use a Federal contribution to the fullest in a most efficient manner. And we believe we will reap economic and social benefits far beyond our investment.

Senator MONDALE. Representative Bell.

STATEMENT OF REPRESENTATIVE ROBERT BELL, HOUSE EDUCATION COMMITTEE, STATE OF MINNESOTA

Mr. BELL. I am Robert Bell and I am happy to be a minority member of the House Education Committee.

Senator MONDALE. Yes, sir, it is very good to hear from you.

Mr. BELL. As I understand Senate Bill No. 6, it is going to establish a new category. This category consists of the most deserving people, that is, the handicapped. If there is any group that deserves support, it is certainly this group.

In looking at the present Minnesota efforts in assisting the handicapped by public education, we find that Minnesota has established the following, among other things:

1. Presently, Minnesota has mandatory education for all categories of handicapped children.
2. We have flexibility in our programs.
3. We have provisions for nonresident children to be educated at the cost of the home district.
4. Parents can send their children to schools of their choice, if it is a reasonable alternative.
5. Education is provided to the institutionalized children.
6. The State pays all of the cost of education of children in institutions or other temporary residential facilities whose parents' rights have been terminated or whose parents or guardians live outside the State.
7. The State reimburses the districts approximately 50 percent of the cost of special education and an even larger percentage of transportation costs for the handicapped.

From what some of the other people have said here today, this is substantially what Senate Bill No. 6 would provide. In other words, there will not necessarily be any substantial new programs established in Minnesota if Senate Bill No. 6 passes. The only new change for Minnesota will be that we may be eligible for certain Federal funds if certain amendments are made to Senate Bill No. 6.

Some of us look at establishing additional categorical aids with some suspicion. Minnesota has made a valiant effort in our programs of training and educating the handicapped persons. I can appreciate the fact that many other States have not lived up to the high standards set by Minnesota, and I am sure that it is a Federal responsibility to some way put a carrot on a stick in front of these other States to have them reach the high standards established by this State. Establishing another category may be the only way. It does seem to me, however, that we perhaps could be a little more innovative in encouraging other States to establish our high standards than by merely establishing a new categorical aid.

The categorical aids in welfare have made our welfare system, as some have called it, a "mess". Our Federal aid to hospitals in the past

25 years has not been a monument of success. If we are asked to support Senate bill No. 6, there certainly should be something to at least convince persons of my persuasion as to why the only way to encourage laggard States to come up to our standard is by establishing another categorical aid. Taxes in Minnesota, like all States, are, of course, high, and our financial burdens are difficult, but when April 15 comes I find that I far more dread the Internal Revenue Service than I do our local commissioner of taxation and they separate me from far more funds than do our local authorities. I might also add that if we believe the recent comments of Jack Anderson, the national columnist, on what some of our leading citizens pay in Federal income tax, that system isn't very progressive.

In making the above comments, in no way do I want to detract from the high purposes of Senate bill No. 6. I personally am acquainted with many people in the mentally retarded program for the State of Minnesota, and what these people have done has been astounding. I know that handicapped people do need special attention. I know that in our programs for the mentally retarded generally we have been a success because we have followed programs previously established in countries like England and Sweden which led the way. I congratulate you for being interested in the problems that Senate bill No. 6 attempts to solve.

I only ask that alternatives to categories be explored. I dread the thought of having our education finances become what our welfare system is.

Thank you for being interested. Thank you for listening.

Senator **Mondale**. Thank you very much.

The cosponsors of this measure include Senators Brooke, Javits, Schweiker, who are minority members of the Senate, so I say that to show that there is a bipartisan support for the bill.

Mr. **Bell**. I see that.

Senator **Mondale**. All things together, I guess the money should be returned to the State and local governments with as few strings as possible.

What we are faced with, where there is compelling national need or a need which has national implications, we are confronted with needs that are being substantially unmet. Adding to that is a growing number of court decisions that say it is not only a moral responsibility but also a legal responsibility. What do we do to encourage State and local governments to meet this responsibility and to help States like Minnesota who are doing these things? We can ask some questions, and I don't think there is an easy answer to it.

Senator **Mondale**. Jerry, you might respond since you support this legislation.

Dr. **Hughes**. I thought I would respond briefly to Representative Bell, and I think we have to recognize, Representative, that Minnesota is the leader in many ways and that we are doing something well in Minnesota, and we ought to encourage other States.

I think the categorical aid that would come to Minnesota would be very appropriately used, as would be the case in the money going to other States. The need exists and I think that Minnesota, having the resources and having the leadership and the philosophy for helping handicapped children, ought to try to encourage the legislation at the national levels and people in other parts of the country to benefit from this very needed legislation. Minnesota is a leader, as we know, in many areas of education and we are proud of this. I believe that with the money going to the State department of education, as I look at the bill, I would see, in my opinion, that the money would be given to the handicapped.

Mr. GRABA. It is an echo of what Jerry said, but I guess when I look at the national scene, Representative Bell, I am concerned, as you are, that other States are not doing as well as we are in Minnesota. I guess I am also concerned with the fact that we are not doing as well as we could and probably everybody will get to that goal faster if we have Federal participation.

I guess I am not any more anxious to get involved in the redtape of Federal financing than anyone else, but if that is what it takes to get the job done, then that's what must be done.

Mr. BELL. I certainly agree that this category of people should certainly be helped and it very well may be that this is the only way. Then, so be it. But I just look at the past in the other Federal categorical aids and they have not been monumental successes.

Senator MONDALE. Which categories did you have in mind?

Mr. BELL. I was talking about, as I understand it, Senate bill 6 is going to aid one category.

Senator MONDALE. But which categories?

Mr. BELL. I said that I didn't think our programs in other fields——

Senator MONDALE. But which categories did you have in mind?

Mr. BELL. I didn't mean to infer that the categories didn't work. I meant that the people suffering, given specific aid in the past, haven't been helped.

Senator MONDALE. How fully are handicapped children being served in Minnesota? In other words, we say 57 percent, 70 percent, somewhere in there. Could we know how adequately the children within the so-called "served" category are being served?

This gets very expensive, as we know. The estimates often show it costs, on the average, twice as much, depending on the nature of the handicapped. Would it be fair to say that those who are being served are served fully and now we must step ahead and serve the others, or would it be fair to say that within those that we talked of being served there is an unfulfilled need in terms of adequacy of the service?

Mr. GRABA. Our evaluation techniques in terms of any schoolchild are very minimal. Evaluation of how well the handicapped are being served is probably even worse.

My personal feeling is that the first priority probably ought to be to extend services to all of the handicapped first and then go to increasing the quality of the services that are now being offered to existing children who are being served.

Just to give you an example, and I don't know how we will overcome this problem, but in rural parts of the State of Minnesota we run into tremendous transportation problems. A handicapped child, in order to participate in a particular class, might very well spend as much as 3 or 4 hours a day on a schoolbus or be transported by a private citizen, or his parents. This is exhausting for the child and a wasting of his time and obviously detracts from the quality of education he is going to be able to consume.

One of the things we have to look at in rural Minnesota is that we now provide for transportation for the child to the class, but one of the things we are going to have to look at in the 1975 session is transportation of a teacher to the child with the understanding that the teacher can withstand the exertion of the traveling. We don't aid that sort of transportation at the present time.

Senator **Mondale**. You talked earlier about cooperative services. Rural communities would gather together and try to serve the handicapped on the level of a cooperative basis. Do you have some example?

Mr. **Graba**. We have the headquarters of one such program in my hometown where I teach. It is a 10-school cooperative and, in essence, what it amounts to is that these schools have banded together and hired a special education staff and if there is a particular concentration of deaf children in one of the schools, then the other schools will transport their deaf children to that school and the cooperative hires a teacher to teach that particular class. The classes are held in 9 of the 10 schools.

Senator **Mondale**. How is this district established? Do these just get together and cooperate on their own? There is nothing in legislation, is there?

Mr. **Graba**. Of course the laws requiring the education of these children, in essence, force them because of the inability to economically hire a teacher to teach one or two or three children who are blind or deaf in this kind of school district that maybe has one or two such children.

Senator **Mondale**. Is it your evaluation that there is substantial progress occurring?

Mr. **Graba**. We think there has been a tremendous increase in the number of these cooperatives in the rural areas and it is an absolute necessity.

Senator **Mondale**. Do you have some figures, because it might be appropriate if this legislation passes. I think we must have the rural figures from the areas where we have services. We may have the facts from Harlem but Wadena, that is somewhat different.

Dr. **Hughes**. I'd like to briefly respond to your question, too. I think it is a matter that we are not reaching everyone, and certainly those that we are reaching, we are not providing the kinds of services that we would like.

No. 1, its high cost. The caseloads of people who are working with the handicapped are very high in many instances, and this should be rectified. We started the TMR programs in school districts when the school districts weren't ready with space, so we find many programs in not the best kinds of facilities, sometimes in church basements and other places like that.

I would suppose that as our future population starts to decline we will be able to have the handicapped more adequately accommodated in the regular school area as we provide opportunities for ways and modes of getting into the newer schools that are built.

The third point I wanted to mention was the aids with which we identify the handicapped, and I think this is where we want to focus some funds, in early diagnosis and early recognition. We know that maybe a good 15 percent of the people in the State fall into this category and early diagnosis is really where emphasis ought to be. We need what I like to think of as an educational clinic where we do a first-rate job of analysis.

Senator **Mondale**. I agree strongly on that point. There is supposed to be an early screening requirement under the welfare laws by which, almost like medicaid, the State is reimbursed for the cost of screening preschool children to diagnose their medical problems and to identify such things as special learning difficulties, emotional disturbances, retardation, and all of this so we can begin to deal with the problem of the children when they are most manageable. I think that is a terribly important thing and probably one of the least expensive things we can do.

I remember talking to a doctor on the Navajo reservation who nursed a dying Indian child back to health. The child was suffering from kwashiorkor, which is an extreme protein deficiency, and she kept records of what it cost to nurse the child back to health. This was an infant, now, and it came out to $800 a pound to restore the child to health. She said, "For 15 cents a pound, you could have kept the child healthy in the first place."

I think while you can't quantify the special problems in dealing with these problems early, these same ratios probably apply. The earlier we treat it, the better off we are going to be.

I thank you for sitting with our panel.

[The prepared statement of Mr. Bell follows:]

PREPARED STATEMENT OF ROBERT C. BELL, MEMBER OF HOUSE EDUCATION COMMITTEE, STATE OF MINNESOTA

My name is Robert C. Bell. I am a minority member of the House Education Committee.

As I understand Senate Bill No. 6, it is going to establish a new category. This category consists of the most deserving people, that is, the handicapped. If there is any group that deserves support, it is certainly this group.

In looking at the present Minnesota efforts in assisting the handicapped by public education, we find that Minnesota has established the following, among other things:

1) Presently, Minnesota has mandatory education for all categories of handicapped.
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I only ask that alternatives to categories be explored. I dread the thought of having our education finances become what our welfare system is.

Thank you for being interested. Thank you for listening.

Senator MONDALE. Thank you. As I look at our audience I see that Representative Dave Comisky is also here from Mankato.

Our next witness is John Groos, director of special education of the department of education and representing Howard Casmey, commissioner of education, who has a prepared statement that will appear in the record following his testimony.

We are very pleased to have you.

STATEMENT OF DR. JOHN C. GROOS, DIRECTOR OF SPECIAL EDUCATION, MINNESOTA STATE DEPARTMENT OF EDUCATION; REPRESENTING HOWARD B. CASMEY, COMMISSIONER OF EDUCATION

Dr. GROOS. Thank you, Senator, and members of the staff and committee.

I would like, Senator, to have my comments in three parts.

First, I would like to comment for Mr. Casmey. He asked that I do this.

Second, following this, I want to give some comments relative, very briefly, to needs as we see them in Minnesota, and I have some lengthy comments relative to an analysis of the act. These are not really technically analyzed comments but I would want to go briefly into the way we see them at this point.

Senator MONDALE. Certainly.

Dr. GROOS. Mr. Casmey's statement is on page 6 of your document.

The State education agency, and local education agencies, need to establish definite priorities for the use of funds. This is really not entirely possible today, because State agencies have historically not had the tools to set carefully defined goals nor have they developed a monitoring system to help evaluate any goals that they are able to set. In Minnesota we have now moved to the point that the department of education has recognized the national goal of the U.S. Office of Education, that is, "Provide full educational opportunity for every handicapped child by 1980."

As of 1972–73 Minnesota led the Nation in educating an astounding 92.8 percent of its eligible young people. This compares with the national average of 78 percent. It was through the efforts of the legislature in financing the special education program to such a significant degree that has put Minnesota over the national average. The 7.2 percent of eligible students not served in programs are the most severely handicapped of all. The high cost of educational programs necessary to meet the needs of these students would be impossible to obtain without some measure of Federal support.

In meeting the national goal for the handicapped, two ingredients are necessary in order to achieve the goal:

1. Every school district in the State must cooperate and accept that goal as its own, and
2. A plan for implementing a total special education system in every district must be developed.

The Minnesota State Education Agency 1 year ago decided to undertake a project which will by 1974–75 hopefully result in precise statements of the purposes, philosophies, and goals of the State Education Agency. If the State agency can gain the necessary broad-based support in the building of the document, education throughout the State will have a tool to provide a working model for priority setting, goal selection, and evaluation of education programs. This will rapidly have impact at the local school level in terms of quality control.

A document has already been developed that suggests the framework and timetable for implementing a planned special education system. It is not at this point a complete system, but the Special Education Section has been working with schools for 3 years to develop the skeleton. The department moved into the first phase of implementation with large numbers of districts during the 1972–73 school year. State aids will eventually be hooked into this system and eligibility of schools for funds will be contingent on basic compliance and accurate reporting.

Basically, this is not an add-on system. There is agreement between the State department and local districts that data requirements the schools need to plan, implement, and evaluate programs are the same, though albeit at a different level of abstraction than data that the State needs to develop cost effectiveness processes for discussion with the legislature.

It would appear that any action of the Government that encourages movement in this direction must be supported. Senate 6 as proposed by Senator Williams, Senator Randolph, Senator Mondale, and others is a giant step forward in helping us with fulfilling the constitutional mandate that every young person receive the education he needs. I strongly support Senate 6 as it seems especially designed to assist the Minnesota effort.

If enacted this bill would provide new hope and strong support to handicapped children in Minnesota in the following ways: 1. Services would be rapidly increased to those not served; 2, preschool services would be supported and increased; 3, students' and parents' rights would be strengthened in the interest of furthering the education of handicapped children; 4, accountability would at long last be provided for in these programs; and 5, excess cost formulas as proposed seem to provide an equitable way of assuring a fair distribution of cost between State, local, and Federal.

Thank you for your encouragement and support.

This is signed by Howard B. Casmey.

Senator MONDALE. Thank you, both for your statement and for Mr. Casmey's.

Dr. Groos, how many handicapped children are there in the State?

Dr. GROOS. We feel as of the 1972–73 school year, last year, we are dealing with between 72–75,000 school children.

Senator MONDALE. Out of the total school body?

Dr. GROOS. Nine hundred fifty-two thousand, coming to between 7 and 8 percent, I think, of the population in Minnesota.

Senator MONDALE. Does your percentage of handicapped vary significantly from the percentages found in other States?

Dr. GROOS. I can't answer that question, Senator, but I would guess that we are shooting for a target of about 10 percent and we think that we are in line pretty much with what the Federal people are talking about.

Senator MONDALE. How do you break down the handicapped, by categories, and, if you know what the numbers and percentages are approximately, do you target for each category?

Dr. GROOS. We target pretty much as the Federal act and you have proposed. I don't have the percentages in front of me, but I can give you some rough ideas.

Senator MONDALE. All right.

Dr. GROOS. Learning disabilities, for example, probably comprise a third of our population. I would guess that is somewhere around 26,000 of the 72,000.

Senator MONDALE. All right.

Dr. GROOS. The educable retarded group is about 11 or 12,000. The speech handicapped is another big one, almost a third of the population, but, interestingly enough, that has leveled off and we are at least a full index figure lower than the national incidence. We are really talking 2.8 and this is in spite of the fact that we are dealing with some of our severely handicapped people.

Vision, hearing, physically handicapped youngsters is a very low incidence figure, and I think it is pretty much consistent——

Senator MONDALE. Vision, how many?

Dr. GROOS. I'd say 500 around the State; physically handicapped, about the same number.

Senator MONDALE. Only 500?

Dr. GROOS. I would say those are the ones that have been identified as needing special ed.

Senator MONDALE. What age group are we talking about?

Dr. GROOS. 4 through 21, sir.

Senator MONDALE. And only 500 around the State?

Dr. GROOS. I think there are more kids than that but this is the level of service that has been identified and provided for, so those are the only records we are giving you.

Senator MONDALE. In other words, these figures are based upon what the school gives you?

Dr. GROOS. Right, for reimbursement purposes only.

Senator MONDALE. So what else may be out there?

Dr. GROOS. We aren't sure. The head count in vision is pretty accurate in terms of the numbers needing services.

Senator MONDALE. How about hearing?

Dr. GROOS. Hearing, I think 800 to 900 youngsters probably are needing services.

Senator MONDALE. Do you have an estimate of the additional cost needed to provide services for handicapped children or does that vary so widely it is impossible to say?

Dr. GROOS. You asked the question before where are we in quality. If we talk about expansion of present programs, we are at an annual figure now of about $25 or $27 million in reimbursement aid and I would guess with $72,000, say, out of a base of $900,000, we could be talking at that same level of service maybe as much as $38 million on an annual basis for special aid and reimbursement.

Senator MONDALE. That is at the present level of service?

Dr. GROOS. Right.

Senator MONDALE. What is your opinion of the adequacy of the present level of service?

Dr. GROOS. I have some comments here, Senator, in terms of the need in this State. I have a statement here.

Senator MONDALE. I don't want to learn too much.

Dr. GROOS. You want a gut-level reaction?

Senator MONDALE. Yes; just so we can understand it without the figures. We have a staff here to go over the figures.

What is your impression of the quality and adequacy of services; does it vary by category?

Dr. GROOS. I think it does. For example, we came from some hearings at the Faribault State Hospital and people were very concerned because of the level of support being lost from a 10-hour-a-day program to a program that is only running 6 and 7 hours because of the loss of Federal funds. People are talking about regression of these children. We formerly were able to do some things and I think we have just scratched the surface as far as the level of quality for these people. We have to get at them early. We are not getting at these preschool youngsters.

Senator MONDALE. Do you have a rule of thumb as to approximately how many——

Dr. GROOS. I'd say it would take an expenditure of twice as much to get to our school age group in terms of good, substantial quality, the kind of quality I think that we would want to be able to feel comfortable, and feel that we could say we had achieved what we wanted to.

Senator MONDALE. Are we able to deliver anything to preschool children at this point or is this most basically elementary and secondary school aid?

Dr. GROOS. Minnesota has had a staffing center for 5 or 6 years now enabling the State to go down to serve children any time after birth.

Senator MONDALE. Are there many school districts electing to do so?

Dr. GROOS. Very few. The costs are abnormally high; the staff needed to do this hasn't been that well identified in terms of the kinds of things they need to do, and it is an optional program.

Senator MONDALE. Do you concur in the comments that I have made and that others have made that if we could identify others that this is the time to do it?

Dr. GROOS. I would fully concur.

Senator MONDALE. Do you include autistic children?

Dr. GROOS. We have, I would say yes, we do. We haven't spelled it out specifically in our law, but we do include these children.

Senator MONDALE. Do you have any idea what number that would be?

Dr. GROOS. I have no idea.

Senator Mondale, you asked about quality and we haven't dealt with your seriously disturbed child and we haven't dealt with these seriously psychologically impaired children, and I can't tell you the numbers of these children in the State.

Senator MONDALE. You indicated in your statement that the more severely handicapped do tend to be passed over in programs to educate the handicapped. Do you think that this Nation ought to focus on ways to try to deal with the severely handicapped?

Dr. GROOS. I would think that Federal funds could do more for this population than what limited funds did for education of the handicapped, giving us a tool to deal with and the leadership personnel. You heard Mr. Graba talk about cooperatives. Very few dollars are coming into the State. We have leadership people in the districts who are building inservice training and quality with their own people and I think that kind of thing will rub off as they get the capacity to deal with the problem and as they are forced to deal with all of the children. I think this will happen.

Senator MONDALE. Would you submit for the record, by letter is fine, a breakdown of the total handicapped, by categories, percentages, and numbers, as best you can, and then make any other observations about those figures that you think would help us to understand them?

If you have any figures on the problems of the handicapped over age 21 I'd appreciate that and anything that we may be doing to provide services to them, we'd appreciate that.

Dr. GROOS. I will do that, sir.

Senator MONDALE. Thank you very much.

[The prepared statement of Dr. Groos is as follows:]

Testimony Of

John C. Groos, Director of Special Education
Minnesota Department of Education

Contains Statement of

Howard B. Casmey, Commissioner of Education
Minnesota Department of Education

U.S. Senate Committee on Labor and Public Welfare
Sub-Committee on the Handicapped
October 19, 1973

I. Current Status of Handicapped Education in Minnesota

A. Minnesota Statutes

Minnesota statutes require every school district to provide special education for all handicapped children of school age. Districts may provide for those handicapped who have not attained school age, so in effect, the statutes one way or another permit or require educational experiences for handicapped children from time of identification until 21 years of age.

Eligible students are those who have a hearing, vision, or speech disability, are physically handicapped, pregnant, delinquent, mentally retarded, learning disabled or have an emotional disturbance. This constitutes a very broad interpretation of handicap. As in many states, instruction and related services are provided through the intervention of the local education agency (LEA) in arranging for education by a variety of methods; i.e., in the child's resident district, in another school district, in a public or private residential facility or by contract with a public, private or voluntary agency.

The State Board of Education is empowered by the statute to establish any regulations deemed necessary in the administration of the act. A clause provides for an appeal by the parent of a handicapped child to the Commissioner of Education when the local education agency is unable to resolve conflict or to provide an appropriate educational program.

The statutes have been amended to provide clear definitions of residency for handicapped students thus establishing fair equitable and rapid means for a school district to assume financial responsibility for its students, regardless of where they reside in the state.

The system of financing special education programs in Minnesota has been very effective, Great gains have been made in the past ten year period in serving greater numbers of pupils as the goal of serving all handicapped children (90,000 - 100,000) is gradually being reached (72000 in 1972). In addition to the Foundation aid system available for all child en the state provides an additional and special categorical aid for school districts providing instruction and services to handicapped children in the amount of 60% of salary of any essential personnel employed in the special education program. This aid does not exceed $5600 for the normal school year and in addition provides a prorata amount for summer school. Also provided is a special aid for equipment and supplies at 50% of cost but not to exceed an average of $50.00 for each handicapped child in the program. Aid for all transportation and board and lodging costs are paid at the rate of 80% with no limit for the cities of Minneapolis and St. Paul. All other districts will be paid the difference between the per pupil income from a one-mill levy on the district EARC valuation and the average per pupil cost on a current basis.

A major strength of the special categorical aid system is that a major portion of the aid is based on program costs rather than on the number of handicapped children in programs. Aid is paid only to programs that have been preapproved by the State Department of Education which has the potential of insuring program quality. To the extent of the special aid paid, the entire state assumes a portion of the financial responsibility for the education of these children. At the present time, the state is experimenting with a small special education aid program where actual costs incurred in providing the instruction and services, including transportation costs and a proportionate amount of capital outlay and debt service, minus the amount of foundation aid and special aid earned in behalf of such handicapped child, are paid by the state to the providing district.

B. [Current Statistics Indicating Scope and Growth of Programs in Minnesota]

Programs in local education agencies (LEA) served an estimated 72,000 handicapped students in 1972-73, up from 70,161 in 1971-72. Special state aids provided for salaries, equipment and supplies, consultation and examinations was $21,279,000 in 1972-73, up from $18,655,000 in 1971-72. Federal funds from Education of the Handicapped Act totaled $880,000 in 1972-73. In addition to E.H.A. approximately $2,500,000 in Federal funds were expended on education of the handicapped in Minnesota. This includes ESEA, Title III, 15% for handicapped, vocational education set asides, 89-313, Title I ESEA.

A brief summary of state special education aids, and the numbers of children receiving services over a span of years going back to 1957-58 (which was the first year of the program provided under modern statutes) is as follows:

Year		Children Served	Special State Aid
1957-58		17,000	2.3 M
1972-73		72,000	21.4 M
1973-74		75,000	25.7 M
1977 1979	Goal	90,000	38.0 M

C. [Cooperatives - Methods of Providing Leadership, Administration and Management to Local Education Agencies (LEA)]

In Minnesota, as in many other states school districts have joined together to cooperatively provide specialized programs or services which could not be made available by the individual district. Generally, the cooperatives are governed by an administrative council with one school district serving as the fiscal agent. Other cooperatives are established under Joint Exercise of Powers with more formalized structure. More than any other force, Federal funds available to Minnesota have enabled the state to establish coalitions of schools known as Special Education Cooperatives. These cooperatives employ local directors of special education who are relegated by the member schools the responsibility for organizing and managing special education instruction and services that must be provided to each handicapped student of school age residing within the cooperative. The rapid growth in cooperatives as indicated in the following table is a primary reason for the quantity and quality of special education programs in this state, presently composed of 435 independent school districts.

Year	No. of Directors	No. of Sch. Districts with Directors	No. of School Districts without Directors
1967-68	11	11	1231
1971-72	44	231	204
1972-73	54	266	169
1973-74	59	322	113

Federal funds have financed even larger units fr special education services than the interdistrict cooperatives. Seven Special Education Regional Consultants serve the 11 Economic Development Regions and act as a catalyst in helping effect broad based planning and services among local schools in the region and also to provide a liaison between individual regions of the state and the Department of Education.

II. Current Need and Anticipated Thrusts

A. Incidence

In Minnesota during 1972-73, 72,000 handicapped children were served in special education programs throughout the state taking a percent equal to using an incidence figure of 10.14 and applying this against a school based population of 952,000 students at an average excess cost per handicapped child of $894 we arrive at a figure of $89.4 million in excess cost which would earn approximately 67 million for Minnesota under this act. This amount would be in addition to estimates for preschool efforts.

B. Need Based on State's Perception of Major Problems

1. Resources now directed to minimally handicapped student.

A great proportion of state and local resources are expended for services for handicapped children to the point where the resource demands of the severly handicapped (trainable mentally retarded, hearing impaired, vision impaired, physically handicapped, seriously emotionally disturbed and the multi-handicapped) are not being adequately met, especially in the rural, sparsely populated areas of the state.

There is a shortage of trained staff as well as leadership personnel with the competencies necessary to provide services. Advocates must be specifically charged with the responsibility fo seeking out the handicapped children, determining the special needs of these children, and championing the cause of providing the needed services and instruction for these children.

2. Too many students excluded from school.

   Many handicapped children are demitted (excused, excluded or expelled) from school because schools are unable or unwilling to cope with the educational and/or behavioral problems of these children. Too often the demission takes place without due process and equal protection under the law.

3. Secondary Education services lacking.

   There is a great need to improve programming for secondary handicapped children, especially in the area of teaching the needed personal and vocational skills necessary for employment.

   (a) Handicapped children are often excluded from regular vocational courses at the secondary level.

   (b) Appropriate special secondary programs for severely handicapped are not available to most of these children. Too often children are placed in inappropriate programs rather than programs designed to meet their specific needs.

   (c) A large number of severely handicapped children are graduated from public school programs on the basis of reaching the age of 18 rather than on the basis of completion of a meaningful instruction program.

4. Lack of preschool programs.

   Opportunity for preschool services for handicapped children is limited and almost non-existent particularly in the rural areas of the state.

   (a) Preschool programs which do exist are located in the metrop litan areas of the state and directed primarily to the hearing impaired.
   We presently lack the resources and personnel to implement even pilot programs for these children.

   (b) Because of high cost and the permissive nature of the law there is a lack of commitment among educators throughout the state to serve preschool handicapped children.

5. No precise system available for program evaluation.

We do not know the extent to which handicapped children who are receiving special education services are making gains commensurate with program expectations.

Although there has been a great deal of emphasis in building evaluation skills in special education leadership people in our state, we have a long way to go in developing good evaluation systems for special education program. It is immediately necessary to develop a system for reporting and collecting program evaluation reports on a statewide basis that would result in meaningful information.

C. Priorities Need to Be Established. Part C is prepared by Howard B. Casmey, Commissioner of Educaton

The State Education Agency (SEA) (and local education agencies - LEA) needs to establish definite priorities for the use of funds. This is really not entirely possible today, because state agencies have historically not had the tools to set carefully defined goals nor have they developed a monitoring system to help evaluate any goals that they are able to set. In Minnesota we have now moved to the point that the Department of Education has recognized the national goal of the United States Office of Education, i.e., 'Provide full educational opportunity for every handicapped child by 1980.'

As of 1972-73 Minnesota led the nation in educating an astounding 92.8% of its eligible young people. This compares with the national average of 78%. It was through the efforts of the Legislature in financing the special education program to such a significant degree that has put Minnesota over the national average. The 7.2% of eligible students not served in programs are the most severely handicapped of all. The high cost educational programs necessary to meet the needs of these students would be impossible to obtain without some measure of federal support.

In meeting the national goal for the handicapped two ingredients are necessary in order to achieve the goal; (1) every school district in the state must cooperate and accept that goal as its own, and (2) a plan for implementing a total special education 37 system in every district must be developed.

The Minnesota State Education Agency one year ago decided to undertake a project which will by 1974-75 hopefully result in precise statements of the purposes, philosiphies, and goals of the State Education Agency. If the State Agency can gain the necessary broad based support in the building of the document, education throughout the state will have a tool to provide a working model for priority setting - goal selection - and evaluation of education programs. This will rapidly have impact at the local school level in terms of quality control.

A document has already been developed that now suggests the framework and timetable for implementing a planned special education system. It is not at this point a complete system but the Special Education Section has been working with schools for 3 years to develop the skeleton. The Department moved into the first phase of implementation with large numbers of districts during the 1972-73 school year. State aids will eventually be hooked into this system and eligibility of schools for funds will be contingent on basic compliance and accurate reporting.

Basically, this is not an add-on system. There is agreement between the State Department and local districts that data items the schools need to plan, implement and evaluate programs, are the same, though albeit at a different level of abstraction than data that the state needs to develop cost effectiveness processes for discussion with the Legislature.

It would appear that any action of the Government that encourages movement in this direction must be supported. Senate 6 as proposed by Senator Williams, Senator Randolph, Senator Mondale and others is a giant step forward in helping us with fulfilling the constitutional mandate that every young person receive the education he needs. I strongly support Senate 6 as it seems especially designed to assist the Minnesota effort.

If enacted this bill would provide new hope and strong support to handicapped children in Minnesota in the following ways: (1) services would be rapidly increased to those not served; (2) preschool services would be supported and increased; (3) students and parents rights would be strengthened in the interest of furthering the education of handicapped children; (4) accountability would at long last be provided for in these programs;and (5) excess cost formulas as proposed seem to provide an equitable way of assuring a fair distribution of cost between state - local and federal.

Now to S. 6 directly. The following are section by section comments on the bill relating to questions which we are raising in an exploratory way for further interpretation or possible modification by the authors, if in the final analysis this would seem appropriate:

Sec. 2 - page 2 - line 9 (b) (Target Date)

The target date of 1976 seems too early for full implementation especially if we are talking about insuring appropriate education. If this section is interpreted to mean a requirement for service based on state and local plans, with certain elements of quality education phased in as systems are designed and implemented to cope with complex problems, there is no problem. Hasty but complete requirements for quality that are incompletely conceived and poorly managed are totally unacceptable as we assume data would need to be generated that would pose an impossible burden on the state and local schools.

Sec. 3 - page 2 - lines 19-24 (Definition - handicapped children)

We recognize the need for uniform criteria. However, there should be enough flexibility on a state by state basis that elements of each state's program not be lost in adhering to the definition. In Minnesota for example handicapped students who are classified as 'pregnant' or who are 'delinquent' would not be eligible for services. Suggest the Commissioner of Education be required to negotiate with the states such criteria for eligibility as are deemed appropriate. This could take us away from categorical classification and closer to an agreed upon educational or functional definition of handicapped. If this is not acceptable, the states need to provide more input to the Commissioner prior to formulation of Federal regulations.

Sec. 3 - Page 3 - Lines 3 - 20 (per pupil expenditure for handicapped children)

Agree that all students in public school, private school or state facilities should somehow be counted and profit educationally under this act. Is the act intended to supplant need for Education of the Handicapped Act (EHA), P.L. 89-313, Vocational Education Act set asides - Elementary Secondary Education Act (ESEA) III - 15% for handicapped?

Sec. 3 - Page 4 - Line 16 (5) (preschool)

This would require a change in the present Minnesota Special Education statute from a permissive to a mandatory status.

Sec. 3 - Page 5 - Line 18 (individualized written program)

Agree in concept. However, this is a good example of an area needing a longer period for phase in. Severe problems will result in poor administrative decisions made in haste in this area. Note: See comments Sec. 2 page 2 - Line 9 (b) relating to target date.

Sec. 4 - Page 6 - Lines 13 - 16 (authorization)

Suggest dates for terminating act should be consistent with achieving national goal of education for all handicapped children by 1979-80.

Sec. 5 - Page 6 - Line 22 (1) (age)

First of all, it appears Minnesota would be penalized by not being able to include its present expenditures for handicapped children who are now being served who are even younger than 3 years of age. Secondly, talking about authorization of preschool education in terms of children who are a minimum of 3 years of age tends to diminish emphasis on very early intervention. Suggest change to read - "Children who have not attained school age until 21 years of age.

Sec. 6 - Page 8 (2) - Line 15 (1976)

Not entirely realistic in terms of achieving quality programs. 'Phase in' requirements for quality education on a secondary timetable as a second phase of including all children in programs. Note: See previous comments.

Sec. 6 - Page 9 - Line 9 (4) (Rights of Child)

It is commendable to build in children's rights into this act. Would it be possible, prior to listing the conditions, to insert a clause stating "including, but not limited to."

Sec. 6 - Page 9 and 10 (6) - Lines 24-25 and 1-7 (integration)

This philosophy is admirable but it is also prescriptive and may create over reaction. The qualifying statement to prevent indiscriminate use of the practice of integration needs to be phrased in stronger language in the bill.

Sec. 6 - (7) - Page 10 - Lines 10-12 (membership advisory committee)

Does not stress lay membership. May be fine if not interpreted in the act as an exhaustive or exclusive listing.

Sec. 6 - (10) - Page 11 - Line 14 (administering or supervising)

Not acceptable to suggest herein that state agencies will "supervise" local programs as this then becomes a state operated system. Suggest statement that all programs funded under this act shall be approved by the state agency.

Sec. 6 - (11) - Page 11 - Lines 18-24 (identification)

We would like further interpretation as to the meaning of this part. Although we support the concept of identification at the local school district level it is not reasonable for the state agency to assume case management responsibilities. Should substitute a statement to the effect that the state will submit a plan that will detail the system by which children will be identified, located, evaluated, and how data can be collected as needed on individual students.

Sec. 6 - (b1) - Page 12 - Lines 1-4 (applications)

These lines are overly prescriptive and may encourage the Commissioner or his agents to indiscriminatively request information that may pose an unnecessary burden to the state. Suggest a change to language that would require such exchange to be negotiated insofar as form, timing, etc. Further, that the Commissioner is empowered to request only that data absolutely necessary for proper administration of the act.

Sec. 6 - (3) - Page 12 - Line 19 (reports)

Same comments as in lines 1 - 4 above.

Sec. 6 - (5) - Page 13 - Lines 9-13 (evaluation)

These criteria need to be established uniformly after significant state input. However, the procedures the states will follow in the evaluation process definitely need to be negotiated with the states. For example, the individual pupil evaluation concern at the federal level is valid but states cannot have the methods and procedures prescribed as this not only limits flexibility at state level but forces routine but unproductive data to be collected entirely unrelated to the actual reasons that the data may be wanted. States need to be encouraged to build whatever system they feel can be relevant at a given point in time.

Sec. 6 - (c) - Page 13 - Lines 19-23 (distribution of funds)

Don't understand this provision. Need clarification.

Sec. 6 - (d) - Page 14 - Lines 11-15 (basic criteria)

Agree that uniform basic criteria may be necessary for administering the act. Would like to see language to effect that the Commissioner may prescribe such essential basic criteria as is necessary for the proper administration of the act.

Sec. 7 - (a) - Page 15 - Line 3 (Reporting)

Appropriate public education by 1976 needs to be qualified somehow, or we will make a mockery of the intent of this act. Note: See previous comments.

Sec. 7 - (1) - Page 15 - Lines 13-23 (integration and institutionalization)

The concepts of integration and de-institutionalization are entirely valid and we support them. My only concern is that if this is mentioned specifically in the act then a qualifying statement should accompany and stress the care with which these practices must be accomplished.

Senator MONDALE. Next is a panel of parents: Mrs. Mary Hinze of St. Paul, Mr. Robert Jensen of Minneapolis, and Mr. Robert Provost of Minneapolis.

Proceed, please.

STATEMENT OF ROBERT JENSEN, PRESIDENT, NATIONAL ASSOCIATION FOR RETARDED CHILDREN, ACCOMPANIED BY MARY HINZE, ST. PAUL, MINN., AND ROBERT PROVOST, VICE PRESIDENT, MINNESOTA ASSOCIATION FOR CHILDREN WITH LEARNING DISABILITIES, A PANEL

Mr. JENSEN. Senator Mondale, committee members, and my fellow parents: My name is Robert Jensen, and I am serving as president of the National Association for Retarded Children. I am a member of the Minnesota and Minneapolis chapters of NARC.

I like to think that the Associations for Retarded Children, through their legal advocacy in Pennsylvania and elsewhere, have had some influence on the piece of enlightened legislation we are discussing here today. The Education of All Handicapped Children Act, when enacted into law, will have a profound effect on the quality and quantity of educational services for all handicapped children.

Only a few years ago, school districts were unable to provide quality education for mentally retarded and other handicapped children because of the primitive state of the art; there were few trained teachers, almost no research into the nature of learning, and no specialized instructional materials.

This was the situation when our son, Mark, at the age of 6, was ready for school. Unfortunately, there was no school for Mark. My wife and I joined forces with other parents in our school district and convinced our school board that Mark and his friends deserved the chance to become as independent and self-sufficient persons as possible, and that the public school should be the channel for the education and training they needed to reach that goal.

As a result of that experience my wife, Mary Ann, and Mark were featured in a film that described our experiences and urged parents to organize to get school services for their children. That little public education piece, amateurish though it seems in retrospect, helped to open school doors to other children in our State.

Mark has just celebrated his 20th birthday and though his I.Q. is about 35, he is today able to work, a demonstration of the value of education.

In the intervening years, special education has developed into a sophisticated science, with an ample supply of well-trained teachers, skillfully designed instructional materials, and a whole new educational technology based on behavioral research that emphasizes the uniqueness of each child.

Even when it was in its infancy, the education of handicapped children was expensive. The cost of special education, probably more than any other factor, has denied handicapped children appropriate education. Ironically, the research and specialized training which have so improved special education have further increased its cost and further widened the gap between what we know how to do and what we actually do.

As Senator Williams points out in his testimony in support of the bill last January, substantial Federal assistance to the States must be forthcoming to assure handicapped children their educational birthright. I can only concur with his eloquent argument that the first year's funding of $1.7 billion is minimal compared to what society pays for maintaining children at a low level of functioning by denying them access to appropriate services.

Senator MONDALE. Thank you very much.

I was impressed by your statement that your son has about a 35 I.Q. and is working. What kind of training did he receive?

Mr. JENSEN. My kid has the benefit of receiving treatment since he was 3 and it is important at a young age to start working with a youngster to teach them some of the basic things that come naturally to other children, so he did participate in a structured setting of day workshops until he became 6 and then he was in the public school system.

Senator MONDALE. What does he do for a living now, what type of work?

Mr. JENSEN. He is in a sheltered workshop. Actually he is making a little money, of which he is very proud, and he works 5 full days a week and he is a much improved individual for this.

Senator MONDALE. Wonderful—a success story.

In your impression, is Minnesota ahead of most States in this category, due to the present national association?

Mr. JENSEN. I would have to say yes, Minnesota is definitely among the leaders. There are a few other States. Nebraska is, for one, also a leader. But Minnesota certainly has to be very competent.

Senator MONDALE. Thank you, sir.

[The prepared statement of Mr. Jensen follows:]

PREPARED STATEMENT OF ROBERT JENSEN, PRESIDENT, NATIONAL ASSOCIATION FOR RETARDED CHILDREN

Mr. Chairman, and Members of the Committee:

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Senator MONDALE. Next is Mrs. Donald Hinze.

Mrs. HINZE. My name is Mrs. Donald Hinze of St. Paul and I am the mother of two handicapped children, a 19-year-old son and an 8-year-old daughter. Kathy is a Down's syndrome child.

During the past year I have had an interesting educational experience which has given me some insights not only into the problems of children with handicapping conditions different from those of my children but also into problems faced by their parents. I have been the cochairman of the communitywide committee called the Area IX Committee. The committee was established to assess the facility and program needs of handicapped children in the St. Paul schools in order to develop a citizen-supported construction and renovation plan for the district. Since many children with low-incidence handicaps from the surrounding 16 school districts attend St. Paul's special schools, parents and educators from the entire eastern metropolitan region were involved in the process.

As one of the chairmen, I learned a great deal about the unmet educational needs of children with every conceivable kind of handicapping condition. As a parent, I learned how alike were the problems we parents faced, no matter what the child's handicap might be. I also learned how effective we could be as advocates for our children when we worked together.

I am also a member of the Faribault State Hospital Review Board and in that capacity have reviewed the educational needs of children living there.

I am very pleased to see that the Education for All Handicapped Children Act has the potential for assisting the State of Minnesota and local school districts to meet many unmet educational needs. I note that the bill would provide funds for the full gamut of educational services from preschool through post-high-school vocationally-oriented programs. I was also favorably impressed with the flexibility which would permit the States and local districts to establish priorities to meet their own special needs.

For example, the St. Paul Area IX Committee report points out the need in our community for preschool programs for physically handicapped and mentally retarded children. At the present time, preschool programs are available only for hearing impaired, deaf-blind, and visually handicapped children in our area.

Senate 6 emphasizes the integration of handicapped children into mainstream programs. The area IX report recommends that handicapped children be integrated, but with the support services of teaching teams, resource teachers, interpreters, and special learning disabilities services in each school building.

Other identified urgent needs were curriculum development in all handicap areas, inservice education of maintstream teachers who will be working with integrated handicapped children, and speech and language therapy to improve the communication skills of children. It was recommended that counselors attuned to the special needs of hearing-impaired children be employed, that summer school programs be an ongoing part of the continuum, that a better system for evaluating student progress be developed, along with strategies for more parent involvement and communication, better nutrition programs, and a system of transportation which would make a variety of school and community experiences available to all handicapped children, a large order, and one that represents needs in many school districts in Minnesota.

As a member of the Faribault Review Board I am aware that approximately 200 school-age children are not now in school programs in spite of the mandatory special education law. High costs are a deterrent to school districts wishing to establish programs for handicapped children, and it is doubtful that local educators can meet the challenge without more financial help. In Minnesota, legal limitations have been placed on the school districts' ability to increase school revenues through local taxes. Special education in many districts can only grow at the expense of programs for normal children.

In the span of my own experience with special education services, I have seen a great increase in both the quantity and quality of services. Fourteen years ago when our son enrolled in a preschool program for retarded children, there was one such program in the entire eastern metropolitan area; now there are more than a dozen. Mandatory education for trainable children has become a reality, vocational training and rehabilitation programs have increased, and public support for attractive, modern school facilities for handicapped children has been demonstrated.

One need as yet largely and painfully unmet is the education of seriously emotionally disturbed and autistic children. It is my understanding that no where in the United States do programs exist which meet the educational needs of these children. This is an area of neglect for which our society pays dearly. My 19-year-old son is showing the tragic effects of inappropriate and inadequate education. He bears the stigma of the labels of mental retardation and mental illness. His dependence is great. He is unable to use his considerable intelligence; he suffers from a lack of self-esteem, and is unwilling to take risks or initiate activities. He turns inward to achieve satisfaction through day-dreams and fantasies. At 19 he faces the strong possibility that he will never be self-supporting but will be dependent upon his parents and, eventually, the community for the rest of his life. This is not because educators have not wanted to help, or have not tried, but they have been as baffled as we about how to help him.

There are new educational techniques for dealing successfully with young children whose serious emotional problems originate in early childhood. These have come too late for my child, but I cannot urge too strongly that they be developed so that other children like him can become independent, confident people, comfortable with themselves and others.

This bill can make possible the establishment of just such critically needed programs. I believe I can speak for the parents of all handicapped children in voicing support for the aims and provisions of this bill.

Thank you.

Senator MONDALE. Thank you very much for a moving statement. You have two handicapped children. How many children do you have?

Mrs. HINZE. Seven.

Senator MONDALE. And two of them are handicapped?

Mrs. HINZE. Yes.

Senator MONDALE. That is an enormous financial burden, is it not?

Mrs. HINZE. At this point we have been fortunate that our children have not required an extensive amount of medical care or educational costs that have not been met by the public school system. Not all parents have been that fortunate. I believe that our expenses have been light.

Senator MONDALE. But because of this you have been especially active and aware of what is happening and it is your testimony that, although it is too late for your son, there has been a dramatic change in the improvement of services for handicapped children?

Mrs. HINZE. Yes, but unfortunately those services have not served the particular needs of my son.

Senator MONDALE. In one of your statements, I guess, you said your son is autistic?

Mrs. HINZE. That's right.

Senator MONDALE. And that is a problem that we are just beginning to focus on. It could be included in the definition of this legislation but, as you know, we are still in primitive conditions.

I noticed there was a documentary the other night on CBS on an autistic child, trying to create public awareness on this phenomenon. Let's hope we get it done before another generation is gone.

Mrs. HINZE. I would say that St. Paul is in the process of creating a model project for children of this kind and I am certainly hopeful that they will be funded and successful.

Senator MONDALE. Is there any program now for autistic children over 19?

Mrs. HINZE. Not that I know of.

[The prepared statement of Mrs. Hinze follows:]

PREPARED STATEMENT OF MRS. DONALD HINZE, ST. PAUL, MINN.

Senator Mondale:

My name is Mrs. Donald Hinze of St. Paul. I am the mother of two handicapped children: a nineteen-year-old son and an eight-year-old daughter. Kathy is a Down's Syndrome child.

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For example, the St. Paul Area IX committee report points out the need in our community for pre-school programs for physically handicapped and mentally retarded children. At the present time, pre-school programs are available only for hearing impaired, deaf-blind and visually handicapped children in our area. Senate 6 emphasizes the integration of handicapped children into mainstream programs. The Area IX report recommends that handicapped children be integrated, but with the support services of teaching teams, resource teachers, interpreters and special learning disabilities services in each school building.

Other identified urgent needs were curriculum development in all handicap areas, in-service education of mainstream teachers who will be working with integrated handicapped children, and speech and language therapy to improve the communication skills of children. It was recommended that counselors attuned to the special needs of hearing impaired children be employed, that summer school programs be an ongoing part of the continuum, that a better system for evaluating student progress be developed, along with strategies for more parent involvement and communication, better nutrition programs and a system of transportation which would make a variety of school and community experiences available to all handicapped children, a large order, and one that represents needs in many school districts in Minnesota.

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As a member of the Faribault Review Board I am aware that approximately 200 school-age children are not now in school programs in spite of the mandatory special education law. High costs are a deterrent to school districts wishing to establish programs for handicapped children, and it is doubtful that local educators can meet the challenge without more financial help. In Minnesota, legal limitations have been placed on the school districts' ability to increase school revenues through local taxes. Special education in many districts can only grow at the expense of programs for normal children.

In the span of my own experience with special education services I have seen a great increase in both the quantity and quality of services. Fourteen years ago when our son enrolled in a pre-school program for retarded children, there was one such program in the entire east metropolitan area; now there are more than a dozen. Mandatory education for trainable children has become a reality, vocational training and rehabilitation programs have increased, and public support for attractive, modern school facilities for handicapped children has been demonstrated.

One need as yet largely and painfully unmet is the education of seriously emotionally disturbed and autistic children. It is my understanding that nowhere in the United States do programs exist which meet the educational needs of these children. This is an area of neglect for which our society pays dearly. My nineteen-year-old son is showing the tragic effects of inappropriate and inadequate education. He bears the stigma of the labels of mental retardation and mental illness. His dependence is great. He is unable to use his considerable intelligence, he suffers from a lack of self-esteem, and is unwilling to take risks or initiate activities. He turns inward to achieve satisfaction through day dreams and fantasies. At nineteen, he faces the strong possibility that he will never be self-supporting but will be dependent upon his parents and, eventually, the community for the rest of his life. This is not because educators have not wanted to help, or have not tried, but they have been as baffled as we about how to help him.

There are new educational techniques for dealing successfully with young children whose serious emotional problems originate in early childhood. These have come too late for my child, but I cannot urge too strongly that they be developed so that other children like him can become independent, confident people, comfortable with themselves and others.

This bill can make possible the establishment of just such critically needed programs. I believe I speak for the parents of all handicapped children in voicing support for the aims and provisions of this bill.

Senator MONDALE. Our final witness of this panel is Robert Provost. Mr. Provost.

Mr. PROVOST. Thank you, Senator Mondale.

I have a prepared testimony. May we have this entered without my reading it?

Senator MONDALE. Fine. We will include your statement as part of the record at the conclusion of your testimony.

Please proceed.

Mr. PROVOST. First of all, I think the mere fact that there are three parents at this table indicates that we are, from a parental standpoint, interested in many things. I am the parent of a learning disabled person. I am a person with a learning disability myself, but this didn't affect me in the learning process when I was going through school or in terms of my responsibilities in society.

I think the other thing, in addition to the parental support that you are seeing here, you should know that all of us belong to a Minnesota Committee for the Handicapped and it meets and it agrees on things that we will participate in legislatively. We do not attempt to push our particular program or the particular needs of our youngsters or our group of youngsters to the sacrifice of others.

We also have to keep away from labeling kids, and the reason for this, and one of the difficulties for us to come up here, is that when you have a youngster who is different, you do not want to see that youngster embarrassed any more than you want to be embarrassed by a label that he is handicapped. You put him in some kind of a special program where he continues to be identified as a handicapped youngster. This is a difficult part of your bill and one problem it needs to address.

But for parents of learning disabled kids it is tough to get out to demand for their kids what their kids have a right to receive in terms of the promise of education in our society. In that regard we are speaking of quantity and we are also, I think, speaking of quality.

Learning disabled kids are not being identified in their entirety. They are being pushed into or kept out of the mainstream, but while in the mainstream, the mainstream is missing them or passing them by without teaching them what their capacity is.

For the visually handicapped or the person who has the handicap in terms of not being able to interpret sounds, the difficulty is that some school districts don't do a thing while others accomplish a significant amount. In this regard the people in the State department of education have done a masterful job and are moving in the direction that we completely support and where funding is essential.

You mentioned a most moving story where 15 cents a pound would have been enough to prevent the disease. We see in the learning disabled the same thing and perhaps the people you should have here to testify would be the judge of the Juvenile Court of Hennepin County, Judge Lindsay Arthur, or Archie Gingold, who could tell you of the number of youngsters coming through the court or penal system who have an identifiable learning disability. People now know that perhaps as high as 70 percent of these people have some kind of learning disability. So that is the cost of our failing to invest funds early in their education.

Another difficulty in Hennepin and Ramsey Counties, you mentioned a moment ago that there were Federal resources under title 19 for people who could not afford to have their youngsters identified through a clinical workup. This is being ignored in both Hennepin and Ramsey Counties.

Senator **Mondale**. And in the country at large. HEW tried to get it removed from the law when nobody was looking. It took them 4 years to prepare regulations and while they were working on it they were lobbying to get the law repealed because they are not enforcing it and these children and parents and families and communities in which they live will continue to pay and pay.

Mr. **Provost**. The difficulty with the program is it is extremely difficult to see the need for certain types of extracurricular programs in our schools today and to see a parent become almost a militant adversary because of the small effort being made in behalf of kids in this area. And I would like you and members of your staff to come to the State conference that the parents of learning disabled children put on. It is held at the Leamington Hotel on the 8th, 9th, and 10th of November. We will be bringing in perhaps 2,000 parents and other people.

Thank you for the privilege of talking to you here today.

Senator **Mondale**. Thank you.

You should know that we did pass legislation a few years ago for people with learning disabilities and I think it is probably a classic example of unused funds because I think very often schools or teachers don't know how to identify or treat these children, and then the children are often dismissed as behavior problems, subnormal, or whatever else it is. Added to their difficulties are the profound psychological problems that can often destroy the child.

Mr. **Provost**. The dedicated teachers are caught in an extremely difficult position to have a child that he or she can't deal with, and to admit that is almost to admit that you can't teach. That is a prideful and difficult problem and one that we are working diligently to overcome, that it should not be looked upon as a failure of the teacher in the mainstream but there is a special way to teach that youngster.

REVENUE SHARING

Senator **Mondale**. Three of you parents have handicapped children and in working together and in your communities to try to get to the problem, would you prefer a categorical program based on the provisions of S. 6, or would you prefer some kind of a general revenue sharing?

Mr. **Jensen**. I would like to speak on that.

From our position, we would like the categorical type of sponsorship. Our experience has shown that general revenue sharing, as such, gets lost and you can go around the country and I can cite many, many uses of Federal revenue sharing that has gone amiss and has not reached the target for which I assume it was intended.

Mrs. **Hinze**. This is not an area in which I am too well informed. I do recall the statements, however, of some of our congressional leaders, who have been the most supportive of education for the handicapped.

who have had a strong feeling that unless percentages were specified for funds and unless specific money was identified, that these services would never reach the handicapped. We have seen, of course, that now 10 percent of the Head Start funds are to be used for handicapped children; obviously, those children would not have been served in Head Start programs if that percentage were not designated.

Senator **Mondale**. We have increasingly demanded and set aside funds for that very reason.

Mr. **Provost**. I have to go with the categorical in this area, but my concern isn't on that level. My concern is at the school district level, as Mary indicated. When you are down to where you have limited resources available to provide programs for the handicapped in any shape or form, it means you cut back on other programs and the first ones you start looking at are the athletic programs, and immediately, when you raise that question and you have 867 parents down on you.

I am not against athletics for the institution, but I am becoming antijock because if a school system can provide athletic programs you can provide programs for our kids, so it seems to me we have a battle ahead in deciding which programs are right and important, and it is important for kids to play basketball, hockey, and football and other things, but I sure as hell think some funds should be spent for these kids who need this help.

Mr. **Jensen**. I would like to make a comment to the critics of the categorical program. They say that the programs fail and in many instances I'll admit yes, the programs fail, but it doesn't indicate that the program is bad, it just means that we must do a better job in the application of the program, because therein lies the failure.

Senator **Mondale**. Yes, and now with general revenue sharing, we are getting a better look at it. First of all, we found that in most cases the revenue to be shared and substituted for categorical grants was less than the money that was coming to the State and local government for categorical grants, so, for example, in the urban areas you have 57 cents a share in comparison to what you had before.

You have one general revenue-sharing program now called social services which is supposed to be 2½ million to go to local governments and, as you know, every possible effort is being made to destroy it and put on restrictions and categories. One of the categories they have been trying to cut out is help for retarded children and we hope we have defeated them. For a year and a half now we have had a running battle to maintain the wide latitude that was thought to be necessary.

The other thing is, it seems to me, whether you should have a category or not depends on circumstances. The failure to deal with the handicapped is not just a local problem, it is a national problem. Many of these children are costing the American taxpayers a great deal of money, quite apart from the humanitarian part of it. They end up in prisons or in many different ways so that it is clearly a Federal-State-local, and personal, problem. Because of the cost, the State and local governments have found it difficult to move although they have moved more than the Federal Government has. What we would like to do is assist these governments in paying the costs so that we might get a specific focus on the handicapped and then maybe 20 years from now.

when the program is really moving, we can drop the category and fold it into some existing categories.

In order to do your job at home, we need to hear and make it the issue to educate some people and maybe some day we can drop the category as soon as we have the institutions really in place to do these things.

Thank you very much.

[The prepared statement of Mr. Provost follows:]

STATEMENT OF MINNESOTA ASSOCIATION FOR CHILDREN WITH LEARNING DISABILITIES BEFORE SENATOR MONDALE COMMITTEE IN BEHALF OF S.6, THE "EDUCATION FOR ALL HANDICAPPED CHILDREN ACT", ON OCTOBER 19, 1973, ST. PAUL, MINNESOTA.

The Minnesota Association for Children with Learning Disabilities is a non-profit, parent and professional organization, funded by dues, contributions, and United Way support. MACLD represents the child who has significant problems learning academically, socially, physically and/or emotionally. These problems may be manifested in imperfect ability in listening, thinking, talking, writing, spelling or mathematical calculations. They include conditions which have been referred to as perceptual handicap, brain injury, minimal brain dysfunction, dyslexia, development aphasia. Such terms do not include learning disabilities due primarily to visual, hearing, or motor handicaps, to mental retardation, emotional disturbance or environmental disadvantage.

MACLD serves as an advocate for the learning disabled child and reached out to parents, schools, the court, the state department of education, medical clinics, residential institutions, the church and the home.

The Minnesota Department of Education through the Special Education Section has formulated a "Planned Development of a total Education System for Handicapped Children". MACLD supports this comprehensive and responsible approach to meeting the educational needs of the handicapped child. We also recognize the significant partnership possible if S.6. is implemented and the resultant benefits to all society. We wholeheartedly support this legislation.

Minneapolis, Minnesota
19 October 1973
Presented by
Robert P. Provost, Vice President
Minnesota Association for
Children with Learning Disabilities

Dr. Hughes. You might consider sending invitations to the members of the Senate Education Committee with respect to the conference in November and maybe some of those people would be interested. You can get the members of those from the Senate Education Office.

Thank you.

Senator Mondale. We will take a short break.

[At this time, a brief recess was taken.]

Senator Mondale. Come to order, please. The next panel of witnesses consists of Special Education Director, Duane Christensen, from Bemidji; Jerry C. Gross, Minneapolis Public Schools, and Charles Hagen of the St. Paul Public Schools. If you will, please proceed.

STATEMENT OF DUANE CHRISTENSEN, DIRECTOR OF SPECIAL EDUCATION, REGIONAL INTERDISTRICT COUNCIL, BEMIDJI, MINN.; ACCOMPANIED BY JERRY C. GROSS, PH. D., MINNEAPOLIS PUBLIC SCHOOLS; AND CHARLES HAGEN, DIRECTOR OF SPECIAL EDUCATION, ST. CHARLES PUBLIC SCHOOLS

Mr. Christensen. I am really sorry that Representative Bell didn't stay around. I was going to say it is the classic pattern we have run into in dealing with some of the administrators, for the programs or against them. But they never sit down long enough to hear what we are doing. That is a pattern that I have noticed. I am glad to see you are going to stay around to listen to all that we have to say.

I have submitted a brief prepared statement. I don't expect that it will win an academy award, but perhaps it will be of some value.

Senator Mondale. We will place that in the record at the end of your testimony. Just tell us what you'd like to have us know.

Mr. Christensen. The Minnesota districts just haven't provided services that the law says they have to provide.

As you know, I represent 15 small rural districts, including three Indian reservations.

Senator Mondale. By districts, do you mean counties or districts?

Mr. Christensen. Districts. You see, in the Bemidji District, Blackduck District, they are listed on my statement. These are all independent school districts, and I want to stress the independent. We have been trying to pool those 15 schools together into a unified co-op which can develop services to educate handicapped children.

Fifteen years ago when we started this there were no services in almost all of the schools but there was a good deal of title I money that was available so we saw an opportunity to marry the title I moneys to the State money by using the title I moneys to generate the State funds and, in so doing, we were able to double our effort actually, to where last year we reached close to 2,000 children in that cooperative.

But I want to add to that right away, we are reaching that limit and the quality and availability of service is certainly far from adequate. The reasons are those that have been discussed in some of the previous testimony.

Senator Mondale. What percentage of need are you fulfilling, would you say, in numbers?

Mr. Christensen. I would say probably, and I'd have to guess because we are dealing with the learning disabled and this category is a little wide open at this time, but I would say approximately 70 percent.

Senator Mondale. And of the 70 percent, how adequately are you serving them?

Mr. Christensen. Not very well.

Senator Mondale. Can you give me a hunch? I suppose it depends on the category, but are you serving half of their needs?

Mr. Christensen. I would say we are serving their academic need right now in a much better way than when we started. We have much more accountability with the staff. We have gone to the precision teaching system where we use computer printouts to monitor how the children are growing, so we can be very specific on how the program is going. So I am saying we are doing a fair job in the academics, but when it comes to physically handicapped children and dealing with their vocational needs and dealing with their physical needs, we do a very poor job.

For example, we have no physical therapists in our school cooperative. We do in Bemidji, but we have been unable to free them up for people who come into the hospital and the hospital board is unable to go into a joint situation with us to get this situation met.

The districts were all notified by the title I office that they will not be able to write programs for next year unless they sign a statement agreeing to not marry these funds. So this would throw us back to probably 1957 in this area because it was the Federal funds that enabled us to get the mandatory programs going that were not existent at the time.

Most of the districts have indicated to me that they are not about to do that because they say there are levy limitations and they don't have the money. I asked the Bemidji superintendent the other day, who is very cooperative on this, what would happen if he got 200 parents' appeals next year. That is the only vehicle many times that we have to get services out to individual kids, and I'd say that is the lowest form of advocacy we have in this State.

I would like to have these programs continue because superintendents, principals, and teachers feel that the children need these programs and so we are quite concerned about the Federal effort being separated. We just can't in our own minds understand why title I says we are to serve the most critically disadvantaged youngsters and then says that you can't use it to serve those youngsters.

I don't know what that is, and neither do the superintendents for the most part. We are concerned about the low-incident hapdicapped in our area. We wish we were all here in the Twin Cities so we could share in the nice programs that these gentlemen have.

I have wondered many times why we can't have regional services, for instance, in Bemidji. A beautiful office recently appeared on the shores of Lake Bemidji for the Department of Natural Resources and I don't know how that was decided upon. I suppose because the north is a nice hunting area. I wasn't asked to vote on it or anything else, but these regional offices are always in nice office buildings, so I wonder why we can't have regional centers to serve the low-incidence handicapped.

Why should a mother from Redlake have to go 300 miles to get services for her hard-of-hearing child when she has no car or other transportation?

Senator MONDALE. I think on this rural problem it makes absolutely no sense. Children have to have those services, a full range of services, and have to have them properly organized. For once, I hope we have some service for some of these great needs. There is some language here, but I hope we spell it out.

Go ahead.

Mr. CHRISTENSEN. Anyhow, I feel if the bill could be amended specifically to help us regionally establish a service, we could attract specialized personnel who could assist us, and we certainly have the need because children are all over the State. We know that the incidence figures are quite reliable.

In our area we have many Indian reservations. It is an impoverished area. We do have many handicapped children in many of these areas.

Senator MONDALE. Although these handicaps strike all parents or all income levels, do statistics more often show that the trend is toward impoverished families?

Mr. CHRISTENSEN. The trend seems to indicate that. We have almost 2,000 children in the program and we are very much aware that some of the programs are just scratching the surface and we are not really addressing their needs.

I would like to make the point again very strongly that if this bill comes into the State with the same restrictions that title I has now we could end up with a problem. The fact that Minnesota has mandatory special education legislation and the districts must provide this before they can realize any advantages means that the children are certainly going to lose out. I do think that we would probably be better off without title I and have a bill such as you are proposing here.

Senator MONDALE. Do those new regulations come from HEW ranks?

Mr. CHRISTENSEN. I don't know where they are coming from. The one that came today was from the title I office.

Senator MONDALE. What did it say?

Mr. CHRISTENSEN. In effect, it said that they would not let them write a project for the next year unless they signed a statement to the effect that they would not cofund these programs.

In other words, we are using title I moneys to get the State aids.

Mr. CONTRUCCI (State of Wisconsin). That letter comes from a joint memo from the Department of Health, Education, and Welfare and the Bureau of the Handicapped.

Mr. CHRISTENSEN. To the State department.

Mr. CONTRUCCI. To the title I office.

Mr. CHRISTENSEN. And the title I office of the State is sending the letter out in response to that, apparently.

Mr. CONTRUCCI. The Department did reinterpret the title I statute and it was determined in cases where you have mandatory education that title I should not be used, that the State law dictated that programs be provided and Federal funds would at that point be supplanting——

Senator MONDALE. So we are discouraging the States from requiring the delivery as a mandatory requirement?

Mr. Contrucci. That's right.

Senator Mondale. That is news. Who did that?

Mr. Contrucci. The position is that if the State isn't providing it then the Federal funds shouldn't be used.

A Panel Member. We were originally able to use title I moneys in connection with obtaining the State allocation.

Senator Mondale. In title I we had a set-aside.

Mr. Contrucci. And Wayne Morse originally drafted that legislation and it was originally intended to serve that purpose but it has come to the point now where we can't use it.

Senator Mondale. We are going to extend these guides but we have to do something about that before that time.

If that is true we ought to have a letter from the Subcommittee on the Handicapped. In other words, it says to the State of Minnesota, since you are leading the country and moving ahead in requiring schools to provide this, we will take title I money away from the handicapped program; that is your reward.

Panel Members. Right.

Senator Mondale. That's nuts.

Mr. Christensen. I'm also concerned about the needs of the parents of the handicapped youngsters but I think it has been expressed here.

[The prepared statement of Mr. Christensen follows:]

Bemidji Regional Interdistrict Council

P. O. BOX 571
BEMIDJI, MINNESOTA 56601
PHONE 218-751-8622
DUANE J. CHRISTENSEN, DIRECTOR

AKELEY
BAGLEY
BEMIDJI
BLACKDUCK
CASS LAKE
CLEARBROOK
GONVICK

KELLIHER
LAPORTE
MAHNOMEN
NEVIS
PARK RAPIDS
REDLAKE
WALKER
WAUBUN

To: Senator Mondale and Other Members of the Committee

COMMENTS PREPARED FOR A HEARING ON S-6, A BILL TO PROVIDE FINANCIAL ASSISTANCE TO STATES FOR IMPROVED EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN

Prepared By: Duane J. Christensen
Director of Special Education
Bemidji Regional Interdistrict Council
A cooperative of 15 schools developing services for handicapped children in North Central Minnesota.

COMPREHENSIVE SPECIAL EDUCATION SERVICES FOR NORTH CENTRAL MINNESOTA SCHOOLS

In addressing to this bill, I am speaking on behalf of fifteen school districts totalling 17,000 children including three Indian reservations. Our area of work covers approximately 5,000 square miles of territory. I also represent 150 teachers working directly with the handicapped and 2,000 children presently being served in minimum programs. I am also speaking as a father of an 11 year old severely handicapped child.

Minnesota districts have had mandatory legislation requiring services to the handicapped since 1957, but it wasn't until 1966 with the implementation of programs such as ESEA Title I, III and VI that progress began to be made on serving some of the handicapped in places like rural North Central Minnesota. The reasons given by the districts were in fact those of Mr. Williams in his testimony introducing S-6 on January 4, 1973, such as "we do not have enough money", "we cannot cut services to other children" and so on and on.

Districts in many areas of the state and particularly in the northwest used Title monies to initiate the mandatory programs, thus drawing state aides and thereby doubling the effort. In our area, this has permitted a growth in numbers of children served from 200 children in 1968 to 2,000 in 1973.

Within the past few weeks our districts received notice that they are to terminate the marriage of Title I funds and State funds because of Minnesota's mandatory law and assume these services on a local-state basis. At the same time they are being asked by Title I administrators to serve the most disadvantaged children. The area handicapped fall into this category so superintendents are in a dilemma as to whether to break state law or federal regulations. In addition to this, superintendents tell me that they cannot provide additional services because they are at a levy limitation on spending as determined by the State legislature. Clearly, re-ordering of education priorities can be in order, but Special Education Administrators are not in the best position to force this issue.

With this background, I will comment briefly on the bill, S-6.

1. It would seem that under "Definitions" (Sec. 3) the handicapping labels do not describe the educational problem. For example, many handicapped children learn as well as normal children when given the proper sequence of tasks or procedures and adaptive equipment, while many bright, normal youngsters do not learn as well for not having a proper program. We need to functionally define these children using data based learning patterns. Such a plan is currently being implemented by the State of Washington. Under this model cascade levels of service are available to every child according to his assessed need. In that regard, let's call a moratorium on all standardized achievement and I.Q. testing and use that money to individually screen all children on skill growth and acquisition. Schools in our area are moving in that direction. The cascade system of services after screening will result in integration of the handicapped as called for in the bill.

2. The written contract program is an excellent idea and would help to bridge the gap which now exists between home and school in many places.

3. Before the LEA's could claim aid under this bill they should submit a detailed plan to the state as to how the cascade of services will be carried out including physical plant arrangements, multi-level materials to be acquired, equipment, and staff to be hired and show evidence that there is concensus among parents, professionals and children that the staff, methods, materials and equipment will meet their needs.

4. Under "Eligibility" Item 4, the bill calls for at least an annual review of the program. This should be changed to a monthly review because much damage can be done by incompetence in a years time. Also, the evaluation presented at this review should be more than standardized testing. Daily continuous measurement should be required.

5. Under the due process clause, it would be well to require the school to provide to the parents a "plain English" advisement of their rights under the law. This portion is an excellent part of S-6.

6. Item 9 under "Eligibility" can cause trouble as in Title I ESEA when mandatory services are not in existence. Can the law project an answer to that dilemma.

ADDITIONAL ITEMS FOR THE BILL

1. Referring back to the Cascade of Services which each LEA should provide, it is recognized that there will be difficulty providing for service to the low incident handicaps. The State should be required to develop regional low incident centers to deal with this problem. This could be done in partnership with local cooperatives. We have Regional Offices for a number of state and federal services now, but no provision for the handicapped on a regional basis. A case in point - we have one residential crippled children's school in Southwestern Minnesota which serves the entire state.

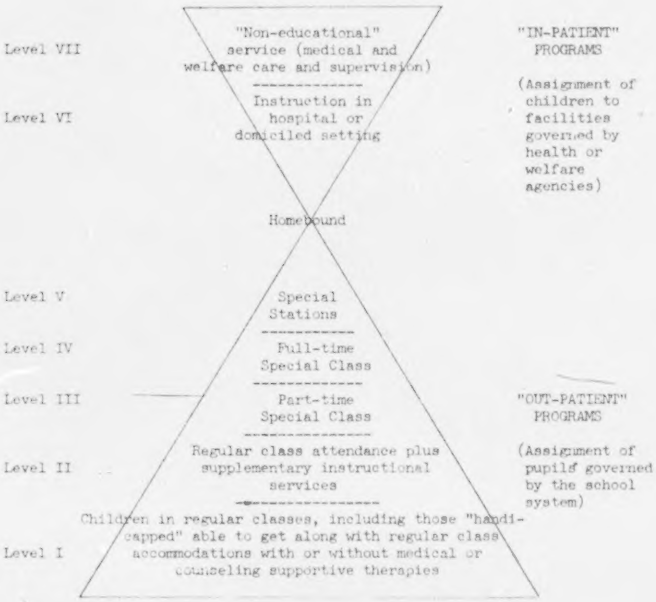
2. Money should be made available to help school districts remodel existing buildings to accommodate the handicapped. We have many two and three story school buildings in our area with no elevators. This would eliminate a big excuse many administrators have for not integrating some of our handicapped.

In summary, the bill will serve rural Minnesota quite well provided that its use will not conflict with existing mandatory legislation for the handicapped. If it does conflict, we will be worse off than before. We also must be very specific as to who the handicapped are under the bill and we would urge a functional definition be used rather than a categorical one and the implementation of a cascade services model in every LEA. Our staff would be eager to assist in developing a new definition along functional lines.

Thank you for this opportunity to appear on behalf of handicapped children.

The Cascade System of Special Education Service

A Representative Range of Service Options


Level VII
"Non-educational" service (medical and welfare care and supervision)
"IN-PATIENT" PROGRAMS
(Assignment of children to facilities governed by health or welfare agencies)
Level VI
Instruction in hospital or domiciled setting
Homebound
Level V
Special Stations
Level IV
Full-time Special Class
Level III
Part-time Special Class
"OUT-PATIENT" PROGRAMS
Level II
Regular class attendance plus supplementary instructional services
(Assignment of pupils governed by the school system)
Level I
Children in regular classes, including those "handicapped" able to get along with regular class accommodations with or without medical or counseling supportive therapies

The tapered design is used in the chart to indicate the considerable difference in the numbers involved at the different levels and call attention to the fact that the system serves as a diagnostic filter. The most specialized facilities are likely to be needed by the fewest children on a long-term basis. This organizational model can be applied to development of special education services for all types of disability.

Senator MONDALE. Mr. Hagen, you may proceed.

Mr. HAGEN. Senator, members of the staff of the subcommittee, I am very pleased, along with my colleagues here, to have this opportunity to present testimony on behalf of handicapped children and youth in our schools, as it is my most important responsibility, as a director of special education, to serve as an advocate for these pupils.

The St. Paul public schools accept responsibility for the education of all St. Paul children: Those who are physically, mentally, or emotionally handicapped, including those with hearing, vision, orthopedic, learning, and behavior problems; and, those who have superior potential in academic, artistic, scientific, mechanical, or other creative areas which will be wasted without appropriate nurture.

In addition, each child is special in some way, and the school system offers programs that give each individual the opportunity to develop his unique capabilities.

Special education programs in St. Paul are designed to provide appropriate levels of service for particular levels of need.

The St. Paul schools accepts the responsibility to provide equal educational opportunity for all children. It is assumed that no child is incapable of benefiting from an educational program suitably tailored to his needs.

The special education program of the St. Paul schools seeks to provide an appropriate level of service to match each child's level of need. The chart in my formal testimony derived from a model developed by Reynolds and Deno, presents this concept in graphic form. The tapered design in the chart indicates the considerable difference in the numbers of children involved at the different levels of service. The most specialized facilities are headed by the fewest number of children.

Thus, homebound or hospitalized pupils and those who are in residential or institutional programs are served by special instruction provided in those settings, that is, Boys' Totem Town, Bush Memorial, Seton Residence and Booth Memorial, Arlington House, St. Paul Ramsey Hospital, et cetera.

Severely handicapped students are bused to special schools or other special stations where programs designed for their special needs are maintained.

Senator MONDALE. We will put your whole statement in the record. Just emphasize what you have to say in addition.

Mr. HAGEN. This leads us to provide a variety of special education and service in our school district.

At the Child Development Center, for example, which the Senator knows of, as he was out some time ago to help us break ground, we provide a specialized program for those children who have a marked learning disability. We have programs of a very specialized nature, for example, for severely handicapped children. We have very specialized programs for youngsters with behavior problems; programs for the deaf and severely hard of hearing, and some unique preschool programs which we would very much like to expand.

For children and youth with mild to moderate handicaps, supplementary special education programs are made available in the home schools where there pupils may divide their time between regular classes and programs designed to meet their special needs.

Teachers of children with special learning and behavior problems provide tutoring and small-group instruction in neighborhood elementary and secondary schools.

Speech correctionists serve those with speech and language handicaps in elementary and secondary schools.

Special classes are organized in neighborhood schools when enough handicapped pupils are enrolled to sustain a class.

Rehabilitation coordinators and rehabilitation corrections workers assist handicapped secondary students in attaining job readiness and in gaining supervised work experience and job placement.

School psychologists and school social workers provide the diagnostic and social services needed by students whose academic, social, or emotional problems interfere with their progress in school.

Provisions are made within the regular classroom for students who have a discontinuity in their learning process or achievement but whose difficulties do not come within the usual meaning of "handicapped."

For both gifted students and slow learners, courses are differentiated in the academic and nonacademic areas.

The St. Paul public schools have developed appropriate programs to meet the needs of handicapped pupils. More resources are needed to extend the services of these programs to all students who can benefit from them.

A comprehensive program for gifted and talented students has not been fully developed and requires the encouragement of some form of State or Federal aid. Developing the superior abilities of urban, disadvantaged youth has a special priority among the many needs present in our schools.

I noticed, Senator, some of your remarks related very much to where are we now and what are the unmet needs.

In the St. Paul schools there are nearly 10,000 pupils who need special education services while only about 6,700 now receive them, so it is my assessment that we are meeting approximately two-thirds of the need that exists. Almost all of what we do, as has been pointed out in previous testimony, represents instructional services mandated by State law with the right to parent appeal if appropriate services are not provided.

I'd like to make a few remarks now about the uniqueness of our urban situation where we have an increasing number of children with problems, social and psychological problems, retardation, learning and physical disabilities. We found we are serving an increasing number of such children each year and should continue to do so.

We find that it is indisputable that, in urban school systems such as ours, the number of mentally, physically, emotionally, and socially handicapped youngsters is increasing every year and this means that although——

Senator MONDALE. Does that mean that the numbers are increasing or your efforts to identify them discloses more?

Mr. HAGEN. I am sure that both would be the case.

Senator MONDALE. Why would the numbers be rising?

Mr. HAGEN. Because of the changes that are occurring in our urban environment. The actual gross number of such children increases each year because all of the factors that relate to the deterioration of the urban environment serve also to produce increasing numbers of handicapped youngsters. So that in a period of generally declining enrollment, the enrollment of special education is increasing, and we are in the process of responding to many new needs.

Several this morning had mentioned the mandatory education of trainable retarded children. We are also in the process of responding to such needs as the problem of juvenile delinquency and drug abuse and problems of children who are both deaf and blind, as well as other multiple-handicapped children, and the downward extension of special education to young children, including preschool and down to the age of zero, or at such a time as the child is first identified.

There is a need for special programs for junior high youngsters and senior high youngsters with serious learning, behavioral, and emotional problems.

The provision of itinerant serivces for the bilnd, deaf, and physically handicapped enrolled in regular classes.

Cooperative programs with many other agencies who can assist us to serve special education needs.

The need for a viable program for autistic and other seriously disturbed preschool and primary children.

Once the State legislature expanded the law to include trainable children effective 1972, we expanded the program to include all eligible youngsters. That is the impact that a law such as Senate 6 could have, I think, in requiring a free public education for all handicapped children.

It is plain to see that it might take easily another 35 years to create much movement in some of these fields. The 1957 special education law in Minnesota created rapid progress in special education.

In the St. Paul schools, as in the State as a whole, we are now serving nearly two-thirds of all of our handicapped children. The importance of a law which provides financial assistance for improved educational services for handicapped children cannot be overemphasized. In St. Paul alone, we have doubled the number of professional personnel who have worked with the handicapped in 5 years from 200 to 400. Additional personnel are needed to provide educational services for all handicapped children. It now appears that this will be impossible because of severely constrained fiscal resources at the State and local level. We definitely need the full effort of our State and local government through enactment and implementation of a bill such as S. 6, as the Senator pointed out, to provide a quality special educational opportunity for all handicapped children and youth, providing them full equality of educational treatment.

Senator MONDALE. Thank you very much.

It is now estimated the State and local governments spend $2.5 billion and the Federal Government spends $2.5 million, so it is a smaller ratio of title I.

[The prepared statement of Mr. Hagen follows:]

TESTIMONY OF:

CHARLES M. HAGEN, DIRECTOR OF SPECIAL EDUCATION
SAINT PAUL (MINNESOTA) PUBLIC SCHOOLS

PRESENTED TO THE
SUBCOMMITTEE ON HANDICAPPED
COMMITTEE ON LABOR AND PUBLIC WELFARE
UNITED STATES SENATE

October 19, 1973

I am pleased to have this opportunity to present testimony in behalf of handicapped children and youth in the St. Paul Public Schools, as it is my most important responsibility - as a director of special education - to serve as an advocate for these pupils.

Special Programs for Special Needs

What is the Problem?

The St. Paul Public Schools accept responsibility for the education of all St. Paul children:

- those who are physically, mentally or emotionally handicapped, including those with hearing, vision, orthopedic, learning and behavior problems, and
- those who have superior potential in academic, artistic, scientific, mechanical or other creative areas which will be wasted without appropriate nurture.

In addition, each child is special in some way; and the school system offers programs that give each individual the opportunity to develop his unique capabilities.

The St. Paul Program

Special education programs in St. Paul are designed to provide appropriate levels of service for particular levels of need.

The St. Paul Schools accepts the responsibility to provide equal educational opportunity for all children. It is assumed that no child is incapable of benefitting from an educational program suitably tailored to his needs.

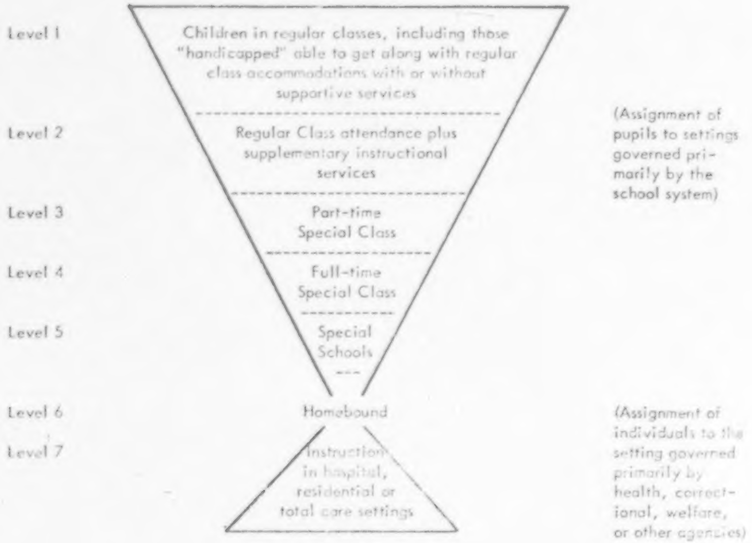
Levels of Special Education Service.

The special education program of the St. Paul Schools seeks to provide an appropriate level of service to match each child's level of need. The chart on the next page, after a model developed by Reynolds and Deno, presents this concept in graphic form. The tapered design in the chart indicates the considerable difference in the numbers of children involved at the different levels of service. The most specialized facilities are headed by the fewest number of children.

Thus, homebound, or hospitalized pupils, and those who are in residential or institutional programs, are served by special instruction provided in those settings, i.e., Boys' Totem Town, Bush Memorial, Seton Residence and Booth Memorial, Arlington House, St. Paul Ramsey Hospital, etc.

Severely handicapped students are bussed to special schools or other special stations where programs designed for their special needs are maintained

Levels of Special Education Service


Level 1
Children in regular classes, including those "handicapped" able to get along with regular class accommodations with or without supportive services
Level 2
Regular Class attendance plus supplementary instructional services
(Assignment of pupils to settings governed primarily by the school system)
Level 3
Part-time Special Class
Level 4
Full-time Special Class
Level 5
Special Schools
Level 6
Homebound
Level 7
Instruction in hospital, residential or total care settings
(Assignment of individuals to the setting governed primarily by health, correctional, welfare, or other agencies)

Variation of Special Education Instruction and Service

At the Child Development Center, a highly specialized program is maintained for pupils with markedly limited mental ability.

Children with severe physical handicaps are transported to special programs at the Lindsay School, Battle Creek Junior High, and Highland Park Senior High.

The Hartzell School, the Behavioral Learning Center and classes at the Wilder Child Guidance Clinic meet the needs of elementary pupils with serious learning or behavior problems.

Deaf and severely hard of hearing children are educated in special pre-school, elementary, secondary and post-secondary programs.

A unique [illegible] as well as for [illegible].

For children and youth with mild to moderate handicaps, supplementary special education programs are made available in the home schools, where these pupils may divide their time between regular classes and programs designed to meet their special needs.

Teachers of children with special learning and behavior problems provide tutoring and small-group instruction in neighborhood elementary and secondary schools.

Speech correctionists serve those with speech and language handicaps in elementary and secondary schools.

Special classes are organized in neighborhood schools when enough handicapped pupils are enrolled to sustain a class.

Rehabilitation coordinators and rehabilitation corrections workers assist handicapped secondary students in attaining job readiness and in gaining supervised work experience and job placement.

School psychologists and school social workers provide the diagnostic and social services needed by students whose academic, social or emotional problems interfere with their progress in school.

Provisions are made within the regular classroom for students who have a discontinuity in their learning process or achievement but whose difficulties do not come within the usual meaning of "handicapped."

For both gifted students and slow learners, courses are differentiated in the academic and non-academic areas.

The Saint Paul Public Schools have developed appropriate programs to meet the needs of handicapped pupils. More resources are needed to extend the services of these programs to all students who can benefit from them.

A comprehensive program for gifted and talented students has not been fully developed and requires the encouragement of some form of state or federal aid. Developing the superior abilities of urban, disadvantaged youth has a special priority among the many needs present in our schools.

Conservative estimates show that nearly 10,000 pupils in St. Paul need special education services, while only about 6,700 now receive them.

The "Area Nine" committee of parents and other citizens concerned with special education has recommended a comprehensive plan for new and remodeled facilities for handicapped children and youth. New facilities for the physically handicapped, hearing-impaired, and visually-impaired are planned together with improved space for all special education programs in neighborhood schools and in facilities for children with learning and behavior problems.

Legal Necessity for Programs

Almost all of what is done in the special education program represents instructional services mandated by state law, with the right of parent appeal of appropriate services are not provided to an eligible pupil.

Educational Necessities

Even in a period of declining enrollment, it is a fact - in our urban situation - that we have an increasing number of children with problems, i.e., social and psychological problems, retardation, learning and behavior difficulties, physical handicaps, etc. We have served an increasing number of such children and youth each year and should continue to do so:

School Year	Number Served - Special Education
1963-64	2,608
1964-65	2,733
1965-66	2,916
1966-67	3,111
1967-68	3,429
1968-69	3,620
1969-70	4,603
1970-71	5,313
1971-72	6,275
1972-73	6,510

The number of handicapped children served in special education programs, in each program area (1971-72), and the percent this represents of the state total, is shown below. Additional children served by school social work and school psychology are not represented

Number and Percent of Handicapped Children Served

St. Paul Schools

(1971-72 School Year)

Classification	Total No. Served State of Minn.	St. Paul No. Served	St. Paul Percent of Total
Speech Impaired	24,693	1,333	5.3
Special Learning & Behavior Problems	26,035	2,740	10.5
Deaf and Hard of Hearing	821	178	21.6
Physically Handicapped	465	137	29.5
Visually Impaired	318	95	29.8
Educable Mentally Retarded	11,253	1,396	12.4
Trainable Mentally Retarded	1,821	110	6.0
Home, Hospital & Pregnant Girls	4,756	389	8.2
Total No. Served	70,161	6,275	8.9

We find it is unacceptable that, in an urban school system such as ours, that the number of mentally, physically, emotionally and socially handicapped youngsters is increasing every year. It is unrealistic to believe otherwise. This means that the [illegible] [illegible] [illegible] [illegible] such top needs is:

1. Mandatory education of trainable retarded children.
2. The problem of juvenile delinquency.
3. Programs for children who are both deaf and blind.
4. The [illegible] extension of special education to younger children, including [illegible].
5. The need of a special program for junior high youngsters with serious behavior and emotional problems.
6. [illegible] has [illegible] in regular classes.
7. Cooperative programs with many other agencies who can assist us to serve special education needs.

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[illegible]

5. The need for a viable program for autistic and other seriously disturbed pre-school and primary children.

Personnel Employed in Special Education

The bulk of the funds spent to maintain special education programs is expended for the salaries of the essential professional personnel who deliver special instruction and services to children. In 1971-72, a total of 375.7 professional personnel was employed, at an average (mean) salary of $12,162.

SUMMARY OF PROFESSIONAL PERSONNEL (FULL-TIME) EXPENDITURES

SPECIAL EDUCATION PERSONNEL - ST. PAUL SCHOOLS

(1971-72 School Year)

Classification	No. of Professional Personnel	Total Expended	Average Cost Per Professional Person
Speech Therapists	25.5	$ 236,408	$ 9,271
Teachers, Educable Retarded	105.4	$1,158,647	10,993
Teachers, Trainable Retarded	7	68,868	9,836
Teachers, Physically Handicapped	11	130,400	11,855
Teachers, Hearing Impaired	21	212,716	10,129
Teachers, Visually Impaired	6	61,608	10,268
Teachers, Special Learning & Behavior Problems	96	1,161,848	12,103
Teachers, Homebound	14	176,518	12,608
Physical Therapists, Occupational Therapists, Nurses	5	47,600	9,520
Administrators, Supervisors, Coordinators	14.8	247,710	16,737
Vocational Adjustment Coordinators	7	122,074	17,439
School Psychologists	11	164,520	14,956
School Social Workers	52	779,853	14,997
Totals	375.7	$4,569,210	$12,162

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I would like to assert, that there is no handicapped child who cannot benefit from an education which is suitably tailored to his needs. Our experience, in the 1972-73 school year, as we organized to comply with new mandatory education for trainable retarded children, proves that these children can also benefit from a public school education. We now provide a quality special education program for 400 trainable children. It is one of the best educational programs (of any kind) in our entire school district. It is housed in our newest, most modern school facility, the Child Development Center, and located on the same site as our school district's administrative headquarters. We are proud of the instructional programs we supply to handicapped children in the Saint Paul Schools, for they set a standard of excellence which we seek to maintain in our educational stewardship for all children. They are among our most visible educational programs; we point to them with pride. We share the committment of the United States Senators who have authored Senate 6 to education for all handicapped children; and are pleased to note that Sen. Mondale and Sen. Humphrey are among the authors of this bill.

The special education programs of the Saint Paul Schools represent fifty years of trial and error, starting with early classes for retarded children who were then called educationally sub-normal. Some things have developed very slowly. Until three years ago, our teachers of the retarded received paychecks every two weeks which said "subnormal teacher." We changed that to "exceptional teacher;" indeed, they are exceptional teachers and they teach exceptional children.

Our program for trainable children, one of the first public school programs in the country, began in 1934 as a W.P.A. project. The school district assumed financial responsibility for the program in 1938; and it continued as a small program, enrolling about 100 children, for nearly 35 years. Once the state legislature included trainable children in the mandatory law, effective July 1972, the program grew to 400 and we are now meeting the needs of all trainable children. This is the impact that a law such as Senate 6 can have in requiring a free, public education for all handicapped children.

The 1957 special education law, in Minnesota, has created rapid progress in special education. In the Saint Paul Schools, as in the state as a whole, we are now serving nearly two-thirds of all handicapped children. The importance of a law which provides financial assistance for improved educational services for handicapped children cannot be over emphasized. In St. Paul alone, we have doubled the number of professional personnel who work with the handicapped, in the last five years, from [illegible] to 407. An additional 200 are needed to provide appropriate education and services for all handicapped children. It now appears that this will be impossible, because of severely constrained fiscal resources at the state and local level. In Minnesota, we need the full partnership of the federal government in our special education program, through enactment and implementation of a bill such as Senate 6. This would permit us, in a truly federal-state-local program, to provide a quality special education opportunity for all handicapped children and youth - providing them full equality of educational treatment.

Senator **Mondale**. Mr. Gross, you may proceed.

Dr. **Gross**. I am Jerry C. Gross, assistant director for program services, special education division, Minneapolis public schools.

I welcome this opportunity to testify on S. 6 and publicly thank the Senate for their past and current support for Federal aid to programs serving handicapped persons. I also congratulate you for supporting training and research programs that provide foundations for service to these children and adults. I am personally indebted to you as I received financial support for my advanced graduate study under Federal funds administered through the Bureau of Education for the Handicapped.

Before preparing my remarks for the committee this morning I had an opportunity to discuss S. 6 with professionals in Minnesota who represent a cross section of our State's educational efforts: Special education directors, State education officials, general education administrators, and others. Several themes seemed to dominate these discussions and I would like to share several with the committee today.

First, there is generally enthusiastic support for the intent of S. 6 as it is understood in Minnesota, that is, to federally fund 75 percent of the excess cost of operating approved public school special education programs. Minnesotans have a history of supporting programs for the handicapped. For example, State aid was provided for special classes as early as 1915. Since that time educational programs for the handicapped have steadily grown, especially since legislation made these programs mandatory in 1957. Today we serve over 70,000 handicapped persons annually in Minnesota. This represents approximately 8 percent of our State's school aged population. But even with this growth in service for the handicapped in Minnesota, there are many unmet needs. For example, we still have over 30,000 youngsters in our State today who are unserved or underserved. With many districts going through painful fiscal belt-tightening in the past few years, the drive to reach full services to the handicapped in Minnesota has been stalled. This condition, then, where we have mandatory service laws, where we have stretched existing school budget to their limits and where approximately 30 percent of the State's handicapped are currently not receiving service, has great import for the general enthusiasm with which S. 6 is being received.

Second, Minnesotans have had some very rewarding experiences with certain federally funded programs for handicapped children and S. 6 could, if carefully managed, be the culmination of our State's efforts to reach full service to the handicapped within the next few years. I am referring specifically to title VI of ESEA as amended, to the handicapped "set asides" of title III of ESEA, and to the "set asides" of the Vocational Education Act. The addition of special education leadership personnel in Minnesota under the auspices of title VI of ESEA served as the seed money many districts needed to give their special education program adequate leadership and administrative support. Both title III of ESEA and the "set asides" in the Vocational Education Act have provided excellent support to the existing special education programs in our State. In my district, for example, we are currently supporting programs for the handicapped with moneys from all three of the federally sponsored programs. These successful marriages among Federal, State, and local dollars have made federally supported programs for the handicapped an attractive commodity. Because of the efficiency of our State special education department and because of the judicious management of these programs by the Bureau of Education for the Handicapped in the U.S. Office of Education, districts have been able to use these moneys as a viable means of supplementing their local effort.

A third concern that surfaced during my discussion with Minnesota educators was the fact that over the past few years certain education directors in Minnesota school districts have experienced some difficulty with title I of ESEA.

Since 1968, school districts have gone from being able to combine title I funds with State and local funds to serve the handicapped child regardless of where the child resides in the district and regardless of his poverty level to the point where today title I has been totally withdrawn from certain programs serving handicapped pupils. This gradual withdrawal of title I dollars from programs serving handicapped pupils resulted for many reasons, not the least of which was a seeming annual redefinition of the title I guidelines which created confusion at the local and State level over eligibility criteria.

Furthermore, increasing restrictions and limitations from the Federal Government on the definition of a title I child and an increase in the data required from the SEA to qualify for such funds added to the existing concerns over the use of title I moneys to support programs for the handicapped.

In Minneapolis, our superintendent and board of education were able to help our division make up the deficit we experience in our budget as title I moneys were "defined" out of our reach, but not all districts in Minnesota have been as fortunate. Many school districts had to reduce special education programs when title I was no longer an option and this experience has created a concern on the part of special educators in Minnesota over the advisability of initiating programs that have potential for becoming more of a burden than a support to the school district effort to serve the handicapped. It would appear, however, that S. 6 is designed so that the relationship with the State who administers the funds and the Federal Government who provides the funds is such that the probability of this condition arising is minimal.

I am speaking specifically of the program approval system the bill currently contains which seems to provide adequate safeguards against restrictive data requirements.

Fourth, currently in Minnesota, school districts are not required to provide the State with data on local excess costs for special education programs. As is the case in most States, districts are only required to provide cost figures on personnel, supplies, and equipment to gain their entitlement of State special education reimbursement. S. 6 would require districts to report the entire cost of their special education programs so that formula would be required to calculate the district's share of Federal revenue. It is felt by some that with S. 6 these data requirements would be massive. Given our current data requirements, I do not think that this would be the case.

In Minneapolis, as with many school districts in the State, there are nonresident handicapped youngsters attending our special education programs. We are required to calculate our "above State aid" costs for these nonresident youngsters and must then bill the district of residence for these services. These districts, by law, must reimburse us for these services. Likewise, Minneapolis has handicapped pupils attending special education programs in other districts. Each district serving nonresident pupils has responsibility for calculating tuition rates that express their total above-State-aid costs within each program serving nonresident pupils. This activity gives these districts basic experience in extracting formula to yield excess cost data. Currently, Minneapolis and several other districts are cooperating on a study being done in connection with the educational research and development council to isolate and accurately report these special education costs. Our tentative findings would suggest that with careful and thoughtful planning, districts can produce this information accurately. It would seem, then, as if data requirements for S. 6 would be manageable for districts if existing financial reporting systems could be adequately packaged for widespread use.

Fifth, the question of whether or not S. 6. is most beneficial to those States or districts where services to the handicapped are limited has been raised again and again by Minnesotans I have talked with. If this is true, then many Minnesotans would be reluctant to support a bill which could be interpreted as rewarding those districts or States who have made only limited financial commitments to the education of handicapped persons and "punishing" those districts or States who have thoughtfully allocated their fiscal resources to insure a high level of educational service to handicapped persons.

In Minneapolis, for example, to comply with not only the intent but the spirit of the State's mandatory special education laws, our superintendent, John B. Davis, Jr., and our board of education added over $700,000 to meet the mandatory law for the education of the trainable mentally retarded passed in 1972. At the time this represented nearly 1 percent of our district's operating budget. This budget increase for special education required reductions in certain regular education budget lines and as a procedure is effectively what Judge Joseph Waddy required the District of Columbia public schools to do to meet the equal protection rights of handicapped children in that District in what is now the famous *Mills* v. *District of Columbia Board of Education* case. If it turns out that districts or States who have reached, for example, a 90-percent above service level for handicapped persons, by making difficult budget reallocations such as our district made to serve its TMR population, are unable to benefit from this bill, it would seem to suggest a need to build in a provision to correct this oversight.

I would like to close by making several other points relative to specific sections of the bill.

It would seem advisable to extend the age range of 3 to 21 to 0 to 21 and thereby stimulate the continued development of programs at an early age such as those programs begun under the early childhood assistance programs originally funded by the Federal Government.

Senator MONDALE. Wouldn't it be advisable to do away with the age and let the States decide themselves where it makes the most sense? I don't see why at age 21 we should cut it off, where you can treat a problem at age 6 months. I mean those judgments ought to be made locally, I would think.

Dr. GROSS. Yes, we are currently bringing parents with youngsters in and we feel for every youngster that we keep out of a reinstitution something like $250,000 is saved, so it is a quarter of a million dollars for every youngster we can keep out of an institution.

Senator MONDALE. Each youngster?

Dr. GROSS. Yes.

It is also most helpful to see that you have not required the State or individual district to submit a specific overall plan for implementing this bill. Rather you have required the district to have a specific set of objectives for each child enrolled in a program of special education with some provision for involving the child's parents or guardian in these programs to the end that due process and equal protection are afforded the child and his parent and/or guardian.

Finally, the inclusion of the normalization requirement, section 6(6) is important, especially when it is viewed in relation to the section on definitions, section 3(1), which recognizes the need to identify handicapped persons by labels if only for the purpose of communicating with lawmakers who must ultimately make these critical funding decisions.

Senator MONDALE. Everyone says to be careful and don't label these children, as closely as possible permit them to be a part of the community, and I hope the development of such legislation will give good thought to that.

Dr. GROSS. One final point relative to the quality of our present services. It seems to me we have been so busy expanding the program we have not been able to develop the program.

Senator MONDALE. The Government says we are serving some people—this does not seem to be the case really here—but I have seen it happen so many times that often I think we ought to put that provision that you can't expand a number unless that expansion carries with it quality, because in many cases the fact that so many are being "served" is used as an argument against any more help, and the fact that the services are inadequate undermines respect for the program, so you get hit both ways, and yet you feel just awful about denying services to people who so terribly need them.

Dr. GROSS. In Minneapolis we are attempting to make some substantive changes in our delivery systems for the handicapped in terms of increasing the quality dimensions, and we were able to work with the University of Minnesota, their research and development center, which is funded by the Bureau of the Handicapped, and we were able to make some changes. We don't want to overlook the research as it relates to the quality of services.

As a final point, I would agree with my colleague from St. Paul on the urban systems having to carry the burden of the responsibility on low-incidence handicapped youngsters. We are a collection agency or a regional program for low-incidence programs, that is, people move into Minneapolis and St. Paul and the suburbs and send their youngsters to regional programs that we operate for the physically handicapped and that creates an overburden for the cities of Minneapolis and St. Paul.

We welcome the opportunity of having these youngsters come to Minneapolis because it allows us to operate a program that with just a few youngsters we can't operate.

Thank you, Senator.

Senator MONDALE. Thank you very much.

I am just advised that the U.S. Office of Education sent out regulations which say where a State requires mandatory services, that it will not permit title I to be used on the theory that those funds will be substitutive but they got so much hell that they recently reinterpreted it to go back to where we started, so that just shows you that you can educate the retarded.

Mr. HAGEN. I think it must have come to your attention that the education of other children is mandatory here. It seems to be that you couldn't use title I for such a program, but the education of all children is mandatory.

Senator MONDALE. It doesn't make any sense at all.

Thank you very much.

[The prepared statement of Dr. Gross follows:]

Statement

submitted to the

Subcommittee on the Handicapped

of the

United States Senate Labor and Public Welfare Committee

on S.6

In Behalf of

The Minneapolis Public Schools

and

Minnesota Administrators of Special Education

October 19, 1973

Witness:

Jerry C. Gross, Ph.D.
President-Elect,
Minnesota Administrators of
Special Education and
Assistant Director for
Program Services
Special Education Division
Minneapolis Public Schools
Minneapolis, Minnesota

Testimony

Mr. Chairman and members of the Committee:

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Second: Minnesotans have had some very rewarding experiences with certain federally funded programs for the handicapped and S.6 could if carefully managed be the culmination of our State's efforts to reach full service to the handicapped within the next few years. I am referring specifically to Title VI of ESEA as amended, to the handicapped "set asides" of Title III of ESEA and to the "set asides" of the Vocational Education Act. The addition of Special Education leadership personnel in Minnesota under the auspices of Title VI of ESEA served as the seed money many districts needed to give their special education program adequate leadership and administrative support. Both Title III of ESEA and the "set asides" in the Vocational Education Act have provided excellent support to the existing special education programs in our State. In my district, for example, we are currently supporting programs for the handicapped with monies from all three of the federally sponsored programs. These successful marriages among Federal, State and local dollars have made federally supported programs for the handicapped an attractive commodity. Because of the efficiency of our State Special Education Department and because of the judicious management of these programs by the Bureau of Education for the Handicapped in the United States Office of Education, districts have been able to use these monies as a viable means of supplementing their local effort.

A third concern that surfaced during my discussion with Minnesota educators was the fact that over the past few years special education directors in Minnesota school districts have experienced some difficulty with Title I of ESEA.

Since approximately 1968 school districts have gone from being able to combine Title I funds with State and local funds to serve the handicapped child regardless of where the child resides in the district and regardless of his poverty level to the point where today Title I has been totally withdrawn from certain programs serving handicapped pupils. This gradual withdrawal of Title I dollars from programs serving handicapped pupils resulted for many reasons, not the least of which was a seeming annual redefinition of the Title I Guidelines which created confusion at the local and state level over eligibility criteria. Furthermore, increasing restrictions and limitations from the federal government on the definition of a Title I child and an increase in the data required from the LEA to qualify for such funds added to the existing concerns over the use of Title I monies to support programs for the handicapped. In Minneapolis, our Superintendent and Board of Education were able to help our Division make up the deficit we experience in our budget as Title I monies were "defined" out of our reach, but not all districts in Minnesota have been as fortunate. Many school districts had to reduce special education programs when Title I was no longer an option and this experience has created a concern on the part of Special Educators in Minnesota over the advisability of initiating programs that have potential for becoming more of a burdon than a support to the school district effort to serve the handicapped. It would appear, however, that S.6 is designed so that the relationship with the State who administeres the funds and the Federal government who provides the funds is such that the probability of this conditioning arrising is minimal. I am speaking specifically of the program approval system the bill currently contains which seems to provide adequate safeguards against restrictive data requirements.

Fourth: Currently in Minnesota school districts are not required to provide the State with data on local excess costs for Special Education programs. As is the case in most states, districts are only required to provide cost figures on personnel, supplies and equipment to gain their entitlement of State Special Education reimbursement. S.6 would require districts to report the entire cost of their special education programs so that formula would be required to calculate the districts share of federal revenue. It is felt by some that with S.6 these data requirements would be massive. Given our current data requirements I do not think that this would be the case. In Minneapolis as with many school districts in the State there are non-resident handicapped youngsters attending our special education programs. We are required to calculate our "above state aid" costs for these non-resident youngsters and must then bill the district of residence for these services. These districts by law must reimburse us for these services. Likewise, Minneapolis has handicapped pupils attending special education programs in other districts. Each district serving non-resident pupils has responsibility for calculating tuition rates that express their total above state aid costs within each program serving non-resident pupils. This activity gives these districts basic experience in extracting formula to yield excess cost data. Currently, Minneapolis and several other districts are cooperating on a study being done in connection with the Educational Research and Development Council of the Twin Cities Metropolitan Area, Inc. to isolate and accurately report these special education costs. Our tentative findings would suggest that with careful and thoughtful planning districts can produce this information accurately. It would seem then as if data requirements for S.6 would be manageable for districts if existing financial reporting systems could be adequately packaged for widespread use.

Fifth: The question of whether or not S.6 is most beneficial to those states or districts where services to the handicapped are limited has been raised again and again by Minnesotans I have talked with. If this is true, then many Minnesotans would be reluctant to support a bill which could be interpreted as rewarding those districts or states who have made only limited financial committments to the education of handicapped persons and "punishing" those districts or states who have thoughtfully allocated their fiscal resources to insure a high level of educational service to handicapped persons.

In Minneapolis, for example, to comply with not only the intent but the spirit of the States mandatory special education laws our Superintendent, John B. Davis, Jr., and our Board of Education added over $700,000 to meet the mandatory TMR law passed in 1972. At the time this represented nearly 1% of our district's operating budget. This budget increase for special education required reductions in certain regular education budget lines and as a procedure is effectively what Judge Joseph Waddy required the Washington, D. C. Public Schools to do to meet the equal protection rights of handicapped children in that District in what is now the famous Mills vs. D. C. Board of Education case. If it turns out that districts or states who have reached for example a 90% or above service level for handicapped persons (by making difficult budget reallocations such as our District made to serve its TMR population) are unable to benefit from this bill it would seem to suggest a need to build in a provision to correct this oversight.

I would like to close by making several other points relative to specific sections of the bill.

It would seem advisable to extend the age range of 3 to 21 to 0 to 21 and thereby stimulate the continued development of programs at an early age such as those programs begun under the early childhood assistance programs origninally funded by the federal government. These programs are in the long run the most cost effective as for every child they keep from going into institutional programs, it is estimated that we save some $250,000.

It is also most helpful to see that you have thought not require the state or individual district to submit a specific overall plan for implementing this bill rather you have required the district to have a specific set of objectives for each child enrolled in a program of special education with some provision for involving the child's parents or guardian in these programs to the end that due process and equal protection are afforded the child and his parent and/or guardian.

Finally, the inclusion of the normalization requirement (Section 6, (6)) is important especially when it is viewed in relation to the section on definitions (Section 3, (1)) which recognizes the need to identify handicapped persons by labels if only for the purpose of communicating with law makers who must ultimately make these critical funding decisions.

I thank you for giving me this opportunity to appear before you to testify on S.6 and thank you Senator Mondale for coming to Minnesota to conduct this important Senate hearing.

A Final Point Made With Senator Mondale:

That certain urban centers such as Minneapolis and St. Paul serve as regional programs for the handicapped. That urban centers attract families with handicapped children because of the wider range of service they offer handicapped persons. That urban centers tend to have a higher incidence of handicapping conditions per capita. S.6 would help urban centers manage the fiscal overburdon these three conditions help create.

Senator MONDALE. Our final panel this morning is composed of representatives of our adjoining States, Mr. Victor Contrucci from the State of Wisconsin; Mr. Michael Ellsberry from the State of South Dakota; Dr. Robert Gibson from Iowa; Mr. Rodger Miller from North Dakota; and an old hand in this field in Minnesota, Maynard Reynolds, professor of special education at the University of Minnesota.

I see you have Maynard sitting to the left, which is about where he should be.

Mr. Contrucci, we will start with you. Please proceed.

STATEMENT OF VICTOR J. CONTRUCCI, PROGRAM ADMINISTRATOR FOR MENTALLY HANDICAPPED, STATE OF WISCONSIN

Mr. CONTRUCCI. I am Mr. Contrucci from the State of Wisconsin representing our State superintendent from the State of Wisconsin and Mr. Melcher from the Division of Handicapped Children.

Some of the remarks I am sharing with you are specifically theirs.

I would like to indicate, first of all, that our State superintendent is in favor of S. 6 and we feel it does give an opportunity for the special sharing of the State's responsibility to the handicapped population by the Federal Government.

In our State, as in other States of the country, the Federal court's interpretation of the 14th amendment has led to the position where we are attempting to meet the needs of a minority group of the handicapped that heretofore have not been met. In turn, this has led to passage in our State of a mandatory legislation for the handicapped which is directed to the full implementation of the intent of the 14th amendment.

Senator MONDALE. We might include the Minnesota and Wisconsin laws in the record and those of the other States, just for our purposes when we make up the legislation. I would ask that the record so reflect those things.

Thank you very much.

Being short of time, I think I will ask each of you to limit your remarks to 5 minutes and then I will have a chance to ask questions.

Mr. Elsberry.

STATEMENT OF MICHAEL J. ELSBERRY, DIRECTOR OF SPECIAL EDUCATION, STATE OF SOUTH DAKOTA

Mr. ELSBERRY. I hope I can limit it to 5 minutes.

I am Michael Elsberry. I am director of special education from South Dakota.

I will dispense with all of the beginning and say, briefly, South Dakota has mandatory special education laws which state, "Exceptional children means all children under the age of 21 who are residents of the State of South Dakota and who, because of their physical or mental conditions, are not adequately provided for through the usual facilities and services of the public school." As you can see, this makes local education agencies responsible for all their exceptional children. However, South Dakota is a rural State with several country schools attached to a larger school district. With the distance between these schools, it is extremely difficult for an educational agency to provide appropriate special educational services to all of its exceptional children. In fact, it is almost impossible. In addition, many of these school districts qualify as low-income school districts and can barely provide appropriate education for the majority of their students. Special education is simply a word to them.

Because of the travel involved and the many deprived areas in South Dakota, the Division of Elementary and Secondary Education, Section for Exceptional Children, has had to move toward program consolidation, itinerant teaching, multidistrict programing, and has had to develop a system of cooperative planning that might never have had to be developed in more populous States.

At the present time, the Division of Elementary and Secondary Education, Section for Exceptional Children, receives the following Federal apportionments under the Education of the Handicapped Act and title I:

(1) Part B, State grants: $200,000.

(2) Part C: A. Early childhood, $100,000; B. Educational resource center (approximate), $47,500; C. Deaf-blind (approximate), $30,000.

(3) Part G, Learning disabilities: $80,000.

(4) Public Law 89-313 (approximate), $350,000.

Each of these minimal allocations can be used only to generate the beginnings of special programs and are required to stay within one area of exceptionality, leaving a large void in education programing.

A further example can be shown by a partial breakdown of our part B budget of $200,000; $100,000 is required for administration. With only $100,000 left, the only fair way to distribute money and begin implementing programs is to allocate "seed money" for a program with the LEA being required to take over all program costs the following year. We then provide "seed money" for new LEA special programs. In the past 2 years, we have gone from 7 to 14 new programs under part B. Until we can receive additional State and Federal moneys, emphasis will continue to be placed on 1-year funding only.

Additionally, the Division of Elementary and Secondary Education, Section for Exceptional Children, has $350,000 to provide State special education reimbursement to LEA's on personnel salaries. This comes to approximately 18 percent of salaries. This is not much incentive for LEA-generated programs, who must rely on some State support. However, we are hoping to generate new legislation which will reimburse schools based on unmet needs when they have gone to the maximum mill levy.

Special education is developing in South Dakota. We are gearing up for total identification of all our exceptional children by late fall, 1974. We have developed our needs assessment to accomplish this task. In order to provide as comprehensive a special education service as possible, we have regionalized our State department special education personnel. In addition, we duplicate staff effort in our Education of the Handicapped Act programs. For example, our special education learning disability coordinator is the coordinator of western South Dakota's preschool programs. Each professional is trying to be competent in all areas so travel can be restricted and the travel money used for program management and implementation. However, it is estimated that South Dakota has 35,000 handicapped children, and despite our efforts only approximately 20 percent are receiving appropriate services. Others attend inappropriate programs that probably hurt more than help their development so our comprehensive delivery of services is leaving many children out, either because they haven't been identified or because they are attending inappropriate programs.

With the inception of S. 6, the "Divsion of Elementary and Secondary Education, Section for Exceptional Children," feels that the 20 percent receiving appropriate services will increase to between 90 to 100 percent. S. 6 will help in many ways.

(1) It will provide money for programs on an excess-cost basis;

(2) It will help establish appropriate due-process procedures. South Dakota is now, in fact, involved in writing model due-process law which can be used in any State if so desired;

(3) It will require a guarantee that by 1976 all children must receive an appropriate public education requiring an identification process;

(4) It will supplement local program effort;

(5) It requires a State or local education agency to be accountable for their handicapped programs.

Very simply, S. 6 will give us the money and the means to work toward full educational services for all handicapped children.

Criticisms of S. 6 are minimal. Under "Basic grants amount and entitlement," section 5(A)(1), South Dakota would recommend the following change: "Aged birth to 21 years".

Other Federal guidelines, that is, part C, states birth as the starting point for preschool education.

Under "Definitions" section (1) the term "handicapped children" should include gifted and talented children. South Dakota feels that a child who is gifted in academics or talented in areas such as art, music, et cetera, is also handicapped because of lack of educational programing to suit his or her needs.

In summary, R. D. Laing, the psychiatrist and poet, reminds us that this Nation was and is willing to explore outer space, with all of its unknown, using billions of dollars in developing systems which assure success and a safe return for the space traveler. Isn't it time to develop systems return for man's exploration of inner space, which is the full blossom and care of the individual as he seeks freedom to respond as a normal individual. South Dakota feels that S. 6 will provide many of these freedoms and pledges full support of S. 6.

Thank you.

[The prepared statement of Mr. Elsberry follows:]

TESTIMONY ON S.B. 6

PRESENTED BY:

MICHAEL J. ELSBERRY, DIR.
SPECIAL EDUCATION
DIVISION OF ELEMENTARY & SEC. EDUCATION
PIERRE, SOUTH DAKOTA 57501

TESTIMONY

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE, SUBCOMMITTEE FOR THE HANDICAPPED, I HAVE BEEN ASKED BY DR. DONALD BARNHART, SOUTH DAKOTA STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, TO APPEAR BEFORE YOU TODAY AND GIVE SOUTH DAKOTA'S TESTIMONY, AND FULL SUPPORT, ON SENATE BILL 6 (THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT).

FIRST, LET ME SAY THAT IT IS AN HONOR FOR SOUTH DAKOTA TO PARTICIPATE IN SUCH A HEARING AND AN HONOR FOR ME PERSONALLY TO APPEAR BEFORE YOU, AND GIVE MY VIEWS ON S.B. 6, WHICH ARE THE VIEWS OF THE DIVISION OF ELEMENTARY AND SECONDARY EDUCATION. LEGISLATION SUCH AS S.B. 6 IS A LONG TIME IN COMING AND I'M CERTAIN THAT ALL THE STATES APPLAUD THE EFFORTS OF SENATOR WILLIAMS AND HIS COMMITTEE.

SOUTH DAKOTA HAS BEEN MOVING TOWARD MANY OF THE PROVISIONS OF S.B.6 FOR SOME TIME. HOWEVER, SINCE WE RECEIVE MINIMAL FEDERAL SUPPORT IT IS SOMETIMES HARD TO COVER ALL AREAS MENTIONED IN THE BILL.

BRIEFLY, SOUTH DAKOTA HAS A MANDATORY SPECIAL EDUCATION LAW WHICH STATES, "EXCEPTIONAL CHILDREN MEANS ALL CHILDREN UNDER THE AGE OF TWENTY-ONE WHO ARE RESIDENTS OF THE STATE OF SOUTH DAKOTA AND WHO, BECAUSE OF THEIR PHYSICAL OR MENTAL CONDITIONS, ARE NOT ADEQUATELY PROVIDED FOR THROUGH THE USUAL FACILITIES AND SERVICES OF THE PUBLIC SCHOOL." AS YOU CAN SEE, THIS MAKES LOCAL EDUCATION AGENCIES RESPONSIBLE FOR ALL THEIR EXCEPTIONAL CHILDREN. HOWEVER, SOUTH DAKOTA IS A RURAL STATE WITH SEVERAL COUNTRY SCHOOLS ATTACHED TO A LARGER SCHOOL DISTRICT. WITH THE DISTANCE BETWEEN THESE SCHOOLS IT IS EX-

TREMELY DIFFICULT FOR AN EDUCATIONAL AGENCY TO PROVIDE APPROPRIATE SPECIAL EDUCATIONAL SERVICES TO ALL ITS EXCEPTIONAL CHILDREN. IN FACT, IT IS ALMOST IMPOSSIBLE. IN ADDITION, MANY OF THESE SCHOOL DISTRICTS QUALIFY AS LOW-INCOME SCHOOL DISTRICTS AND CAN BARELY PROVIDE APPROPRIATE EDUCATION FOR THE MAJORITY OF THEIR STUDENTS. SPECIAL EDUCATION IS SIMPLY A WORD TO THEM.

BECAUSE OF THE TRAVEL INVOLVED AND THE MANY DEPRIVED AREAS IN SOUTH DAKOTA, THE DIVISION OF ELEMENTARY AND SECONDARY EDUCATION, SECTION FOR EXCEPTIONAL CHILDREN, HAS HAD TO MOVE TOWARD PROGRAM CONSOLIDATION; ITINERANT TEACHING, MULTI-DISTRICT PROGRAMMING, AND HAS HAD TO DEVELOP A SYSTEM OF COOPERATIVE PLANNING THAT MIGHT NEVER HAVE HAD TO BE DEVELOPED IN MORE POPULOUS STATES.

AT THE PRESENT TIME, THE DIVISION OF ELEMENTARY AND SECONDARY EDUCATION, SECTION FOR EXCEPTIONAL CHILDREN, RECEIVES THE FOLLOWING FEDERAL APPORTIONMENTS:

1. P.L. 91-230, PART B	$200,000.00
2. P.L. 91-230, PART C:	
A. EARLY CHILDHOOD	$100,000.00
•B. EDUCATIONAL RESOURCE CENTER	$ 47,500.00
•C. DEAF-BLIND	$ 30,000.00
3. P.L. 91-230, PART G	$ 80,000.00
•4. P.L. 89-313	$35L,000.00

•APPROXIMATE

EACH OF THESE MINIMAL ALLOCATIONS CAN BE USED ONLY TO GENERATE THE BEGINNINGS OF SPECIAL PROGRAMS AND ARE REQUIRED TO STAY WITHIN ONE AREA OF EXCEPTIONALITY, LEAVING A LARGE VOID IN EDUCATION PROGRAMMING. A FURTHER EXAMPLE CAN BE SHOWN BY A PARTIAL BREAKDOWN OF OUR P.L. 91-230 PART B BUDGET OF $200,000. $100,000 IS REQUIRED FOR ADMINISTRATION. WITH ONLY $100,000 LEFT, THE ONLY FAIR WAY TO DISTRIBUTE MONEY AND BEGIN IMPLEMENTING PROGRAMS IS TO ALLOCATE "SEED MONEY" FOR A PROGRAM WITH THE L.E.A. BEING REQUIRED TO TAKE OVER ALL PROGRAM COSTS THE FOLLOWING YEAR. WE THEN PROVIDE "SEED MONEY" FOR NEW L.E.A. SPECIAL PROGRAMS. IN THE PAST TWO YEARS WE HAVE GONE FROM SEVEN TO FOURTEEN NEW TITLE PROGRAMS UNDER P.L. 91-230, PART B. UNTIL WE CAN RECEIVE ADDITIONAL STATE AND FEDERAL MONIES EMPHASIS WILL CONTINUE TO BE PLACED ON ONE-YEAR FUNDING ONLY.

ADDITIONALLY, THE DIVISION OF ELEMENTARY AND SECONDARY EDUCATION, SECTION FOR EXCEPTIONAL CHILDREN, HAS $350,000 TO PROVIDE STATE SPECIAL EDUCATION REIMBURSEMENT TO L.E.A.'S ON PERSONNEL SALARIES. THIS COMES TO APPROXIMATELY 18% OF SALARIES. THIS IS NOT MUCH INCENTIVE FOR L.E.A. - GENERATED PROGRAMS, WHO MUST RELY ON SOME STATE SUPPORT. HOWEVER, WE ARE HOPING TO GENERATE NEW LEGISLATION WHICH WILL REIMBURSE SCHOOLS BASED ON UNMET NEEDS WHEN THEY HAVE GONE TO THE MAXIMUM MILL LEVY.

SPECIAL EDUCATION IS DEVELOPING IN SOUTH DAKOTA. WE ARE GEARING UP FOR TOTAL IDENTIFICATION OF ALL OUR EXCEPTIONAL CHILDREN BY LATE FALL, 1974. WE HAVE DEVELOPED OUR NEEDS ASSESSMENT TO ACCOMPLISH THIS TASK. IN ORDER TO PROVIDE AS COMPREHENSIVE A SPECIAL EDUCATION SERVICE AS

POSSIBLE, WE HAVE REGIONALIZED OUR STATE DEPARTMENT SPECIAL EDUCATION PERSONNEL. IN ADDITION, WE DUPLICATE STAFF EFFORT IN OUR P.L. 91-230 PROGRAMS. FOR EXAMPLE, OUR S. E. LEARNING DISABILITY COORDINATOR IS THE COORDINATOR OF WESTERN SOUTH DAKOTA'S PRESCHOOL PROGRAMS. EACH PROFESSIONAL IS TRYING TO BE COMPETENT IN ALL AREAS SO TRAVEL CAN BE RESTRICTED AND THE TRAVEL MONEY USED FOR PROGRAM MANAGEMENT AND IMPLEMENTATION. HOWEVER, IT IS ESTIMATED THAT SOUTH DAKOTA HAS 35,000 HANDICAPPED CHILDREN, AND DESPITE OUR EFFORTS ONLY APPROXIMATELY 20% ARE RECEIVING APPROPRIATE SERVICES. OTHERS ATTEND INAPPROPRIATE PROGRAMS THAT PROBABLY, HURT, MORE THAN HELP, THEIR DEVELOPMENT SO, OUR COMPREHENSIVE DELIVERY OF SERVICES IS LEAVING MANY CHILDREN OUT--EITHER BECAUSE THEY HAVEN'T BEEN IDENTIFIED, OR BECAUSE THEY ARE ATTENDING INAPPROPRIATE PROGRAMS.

WITH THE INCEPTION OF S.B. 6, THE DIVISION OF ELEMENTARY AND SECONDARY EDUCATION, SECTION FOR EXCEPTIONAL CHILDREN, FEELS THAT THE 20% RECEIVING APPROPRIATE SERVICES WILL INCREASE TO BETWEEN 90-100%. S.B. 6 WILL HELP IN MANY WAYS. (1) IT WILL PROVIDE MONEY FOR PROGRAMS ON AN EXCESS COST BASIS. (2) IT WILL HELP ESTABLISH APPROPRIATE DUE PROCESS PROCEDURES. SOUTH DAKOTA IS NOW, IN FACT, INVOLVED IN WRITING A MODEL DUE PROCESS LAW WHICH CAN BE USED IN ANY STATE IF SO DESIRED. (3) IT WILL REQUIRE A GUARANTEE THAT BY 1976 ALL CHILDREN MUST RECEIVE AN APPROPRIATE PUBLIC EDUCATION REQUIRING AN IDENTIFICATION PROCESS. (4) IT WILL SUPPLEMENT LOCAL PROGRAM EFFORT. (5) IT REQUIRES A STATE (OR LOCAL EDUCATION AGENCY) TO BE ACCOUNTABLE FOR THEIR HANDICAPPED PROGRAMS. VERY SIMPLY, S.B. 6 WILL GIVE US THE MONEY, AND THE MEANS, TO WORK TOWARD FULL EDUCATIONAL SERVICES FOR ALL HANDICAPPED CHILDREN.

CRITICISMS OF S.B. 6 ARE MINIMAL. UNDER BASIC GRANTS AMOUNT AND ENTITLEMENT, SEC. 5 (A) (1) SOUTH DAKOTA WOULD RECOMMEND THE FOLLOWING CHANGE: "AGED BIRTH TO TWENTY-ONE YEARS". OTHER FEDERAL GUIDELINES, I.E., P.L. 91-230, PART C STATES BIRTH AS THE STARTING POINT FOR PRESCHOOL EDUCATION. UNDER DEFINITIONS SEC. (1) THE TERM "HANDICAPPED CHILDREN" SHOULD INCLUDE GIFTED AND TALENTED CHILDREN. SOUTH DAKOTA FEELS THAT A CHILD WHO IS GIFTED IN ACADEMICS OR TALENTED IN AREAS SUCH AS ART, MUSIC, ETC., IS ALSO HANDICAPPED BECAUSE OF LACK OF EDUCATIONAL PROGRAMMING TO SUIT HIS/HER NEEDS.

IN SUMMARY, R.D. LAING THE PSYCHIATRIST AND POET REMINDS US THAT THIS NATION WAS AND IS WILLING TO EXPLORE OUTER SPACE, WITH ALL OF ITS UNKNOWN, USING BILLIONS OF DOLLARS IN DEVELOPING SYSTEMS WHICH ASSURE SUCCESS AND A SAFE RETURN FOR THE SPACE TRAVELER. ISN'T IT TIME TO DEVELOP SYSTEMS RETURN FOR MANS EXPLORATION OF INNER SPACE, WHICH IS THE FULL BLOSSOM AND CARE OF THE INDIVIDUAL AS HE SEEKS FREEDOM TO RESPOND AS A NORMAL INDIVIDUAL. SOUTH DAKOTA FEELS THAT S.B. 6 WILL PROVIDE MANY OF THESE FREEDOMS AND PLEDGES FULL SUPPORT OF S.B. 6

RESPECTFULLY SUBMITTED,

Michael J. Elsberry

MICHAEL J. ELSBERRY, DIRECTOR
SPECIAL EDUCATION

Senator MONDALE. Maynard, do you think gifted and talented children are handicapped? Senator Javits is the key sponsor of a bill to provide this assistance. What is the progress on this question, Roy?

Mr. MILLENSON. That is already under consideration by the committee. There is also a bill that is under consideration in the House.

Mr. REYNOLDS. I think these men when they go into teaching ought to be prepared to teach these exceptional children. We don't need to send in a separate batch for each problem. These men are studied, they are concerned, and they are prepared to help, and I think it would be a great gain if by this legislation or by some means we could address the problem of exceptional children and let it come forward by some means.

Senator MONDALE. Do you think that using the money for gifted children——

Mr. REYNOLDS. One can always worry, I guess, and I am just not willing to make decisions between this choice. I guess if I had to make my choice, I'd be a little like Bob Provost. I think youngsters with exceptional needs deserve our special attention.

Senator MONDALE. Mr. Gibson.

STATEMENT OF ROBERT L. GIBSON, PH. D., DIRECTOR OF SPECIAL EDUCATION, POLK-STORY JOINT COUNTY DISTRICT, DES MOINES, IOWA

Dr. GIBSON. Senator, I am Bob Gibson from Des Moines, Iowa. I am not in the State department but I am a director of schools in the capital county of Des Moines.

I think from the comments that you have heard today—first, may I just submit the printed testimony for the record.

Senator MONDALE. We will put your prepared statement in the record at the conclusion of your testimony.

Dr. GIBSON. From the testimony you have heard here today, you realize that we who are trying to administer these local programs are really in the middle position.

What I would like to express in my comments is that Iowa, since 1946, has had an excess-cost formula and I would like to raise some questions with you.

In the latter part of my statement there are two tables, one which reflects the history of reimbursement at the State level in Iowa since 1953 through 1973. I concur with your comments that it is unfortunate that authorization doesn't always bring appropriation and it is also true that the appropriations for financing of 100 percent of the costs, as you see, has deteriorated down to 26 percent in the past year.

The tremendous growth of programs in Iowa have gone from just a few hundred thousand dollars to cover $21 million in the past years. The State has not kept up. Now I am inferring from that that evidently we are overburdening the State's ability to meet its obligations, an obligation that they wholeheartedly assume.

It has been my opportunity in the capital county to be working with our State legislature in the past 20 years and approximately 30 to 40 percent of my time has been spent in that regard. I know the legislators' concern to serve at the request of the parents. Last year we were able to say, "OK, we don't have State funds available to fund the excess cost totally of the programs you have already established, but starting July 1, 1972, we will assume 100 percent of the cost."

They did this this year and increased what we have been getting, a quarter of a million dollars in appropriations, to over one and three-quarters of a million dollars, and they did make that effort out of their concern.

We could go into this in more detail if we had more time, but basically I do show in my statement that we start with actual expenditures. From those expenditures the State gives us what we call allowable claims and because of money spent we get a reimbursement.

In reality a class for emotionally disturbed children may cost us $15,000. The reimbursable allowable claim is $3,000. Then when you come down to what was actually prorated, we are talking about $800. That was the State's effort on a local community load.

The last page is a theme in which I try to show you the distribution of the programs during the 1972–73 year of the 18 school districts which I serve. The Capital City, Des Moines, has a tremendous program of its own and through efforts of cooperation they have extended their services. Now the trainable children from our county receive services in a new school built with facility funds from the last of the act for the trainable mentally retarded a few years ago.

What I have pointed out in this table is that there is no relationship between the dollars spent for handicapped children and the size of the school population, as the gentleman from St. Paul and the gentleman from Minneapolis pointed out. In our metropolitan areas many parents are forced to leave their residence to go where they can obtain the services.

Dan Ringelheim, the New Jersey director, made a comment the other day that it is interesting that military men in our United States have to pick and choose where they are going to get transferred based upon where their children can get services.

That basically is my testimony and I'd be appreciative of any comments or questions.

Senator MONDALE. Thank you very much.

Do I understand that South Dakota and Iowa do not have mandatory laws like Minnesota and Wisconsin?

Dr. GIBSON. Iowa and South Dakota do have mandatory laws.

Senator MONDALE. This is getting to be very common, then, for State laws to have provisions?

Dr. GIBSON. I'd like to comment on the advocacy movement by the Legal Aid Society. The Iowa Association for Retarded Children, from a Fund for the Advancement of the Humanities, held a series of seminars across our State informing the parents of the legal rights for the mentally retarded. As a result, we opened a new school for the trainable mentally retarded this year. About 3 weeks later the father of a severely subtrainable child brought this child to school. He said that this subtrainable child was to be included, "My child's coming to school here." We now are taking that child to school and are making judgments to see that that child gets the proper education.

Thank you.

[The prepared statement of Mr. Gibson follows:]

Statement of

Robert C. Gibson, Ph.D.
Director of Pupil Services
Polk-Story Joint County Schools
Des Moines, Iowa

Presented at the
U.S. Senate Labor and Public Welfare Committee
Public Hearing Regarding
Senate Bill 6 Education for all Handicapped Children

St. Paul, Minnesota
October 19, 1974

Contrary to the admonition of the Great Galalean teacher, we in education today do let many children suffer for we forbid them to come unto us. Last month in Des Moines, Iowa we opened a new school built with the last of the facilities' money appropriated by Congress for the Mentally Retarded. Our new school is serving fifty more students today than the old sixty year old former high school structure did last year. We are proud that this enrollment has been steadily increasing as more local and state funds are made available. However heavy restrictions keep us at a snail pace at a time when parents are demanding equal educational opportunities as the rights of all children regardless of society's labels. Educators continue to be in the bind between threats of suits and directives from the courts by the property taxpayers who seek continuing resolution from the major burden for educational expenditures and the parents who have determined that they will obtain equal treatment programs for their handicapped children.

I am here today to support the Labor and Public Welfare Committee's understanding of the need for and the positive effects that S-6 Education for all Handicapped Children's Act can have. We are concerned about and dedicated to this provision of qualify education.

Last year the Iowa Association for Mentally Retarded Children received a U.S. Government grant from the Fund for the Advancement of the Humanities. They used these funds to conduct a series of public seminars across the state on the recent court actions concerning equal rights of the retarded. A Legal Aid lawyer and advocate from the Drake University Law School and a variety of philosophers shared with several hundred parents, interested professionals and friends of the handicapped the current status and need for advocacy activities. They did so on the behalf of mentally retarded, to the end that their civil liverties are obtained and protected.

This advocacy program is paying off. Theresa is a fourteen year old profoundly retarded girl. She had never spent a day in school, because she functions below minimum policy requirements directed by our state education department. Today she is in our new school. "In" is about the extent of her program as we tool up to meet the demand that she no longer be left at home while her brother and sister go to school. The new facility is available with the most appropriate space. Budget limits placed by the local school board (under expenditure limitation placed by our state legislative and executive branches of government) prevent us from hiring appropriate staff and purchasing materials to adequately serve Theresa. We are determined that she will be in school. We will make adjustments because we are faced with determined parents who can obtain court support for their children. We also are under a state legislative mandate to serve all children. We are concerned professionals who appreciate popular support and direction. However we are in a bind, between the rock and a hard place. Conflicts in public policy and limits on financial support are delaying appropriate programs for 58 Theresas that we know of in our community.

That not so brief introduction is intended to express the need we are considering here today - provision of an appropriate individualized education program which adheres to the needs of each child and provides for due process procedures with parental involvement. Let me take all these criteria as given and say I whole-heartedly endorse them. I would address the major portion of my remarks to the excess cost philosophy and process for federal assistance to insure the delivery of services at the local level to all children with handicaps.

The state of Iowa has had a modified excess cost reimbursement program, for special educational programs, since 1947. Local and county school systems operate their programs from local funds; provided that they have applied and received prior approval from the State Division of Special Education. At the end of each fiscal year they report their costs and request state reimbursement which is paid after the fact.

Because program costs are not totally claimable, only excess cost above the state average per pupil costs, the amounts approved are called allowable claims. These claims are approximately 20 to 85% of total costs.

A further reduction in actual reimbursement paid occurs because total state appropriations are limited - therefore the claimed amounts are pro-rated. Each district received for the 72-73 school year 26.5% of their allowable claims. In reality for a special class for 10 emotionally disturbed children costing $15,000 would have an allowable claim of $3000 and the final pro-rated reimbursement paid of $795. This is what we mean my a modified excess cost reimbursement program in Iowa.

Attachment I presents a twenty year review of our experience with an excess cost reimbursement program. While state appropriations have increased sevenfold, the real proportion of the allowable claims has decreased. The cause is the much greater growth rate of costs for additional educational programs.

High cost programs for the handicapped have seemingly overburdened the state's ability to fully cover excess costs. The cause cannot be lack of interest or concern by our state legislative leaders. Recognizing the advocacy activities, the state appropriated funds to cover 100% reimbursement for new special education program which began after July 1, 1972. Limited funds prevented them from covering all programs originating prior to that date. These earlier program claims are the ones prorated at the 26.5% level.

Totally, for the 1972-73, Iowa expended $21,512,121 for all special education programs. The amount schools were permitted to claim as excess costs was $13,314,265. State funds available were $1.7 million for new and expanded programs and $3.6 million for the prorated services. Eight million dollars would be needed to have paid all excess costs claimed. The proposed S-6 could have covered that and provided additional funds for programs that were not provided to those handicapped not yet served. Our best estimate of unidentified and unserved children is about 40%. These are for the most part those with mild handicaps on the one hand, moderately handicapped in isolated rural areas and the heavily loaded inner city areas. Many severely handicapped children with multiple disabilities are in need of additional support services. The greater the disability the more services needed, therefore, higher the costs. The greater the need for a total local, state and federal partnership.

Attachment II is a breakdown of the 1972-73 special education costs for our two county (eighteen school districts) program. Just under 8000 of the total 74,000 pupils were handicapped children served by the programs supported by local and state efforts.

Class costs include the teachers salary and an estimate of other costs based on a state formula. These are self-contained instructional programs for groups of children.

Personnel costs are for resource and itinerant teachers, consultants, psychologists, speech and hearing clinicians and others who directly served handicapped children and/or their teachers as diagnostic, instructional and support personnel. Individual programs were mostly transportation costs to special programs plus tuitional and instructional equipment costs for short term home bound and hospitalized children.

Of the $3.5 million expense of our program, $1.6 million was considered under our rules and regulations as allowable claims. Due to the limited state appropriations, pro-tation reduced that claim to $420,000 approximately.

S-6 would have made possible the full payment by the state of that claimable amount. The local districts would have had $1.2 million to meet the unmet needs for the handicapped. If there is such a district that is serving 100% needs of the handicapped, it could have provided a direct reduction in local property tax levies.

S-6 is needed. Adequate programs for handicapped children are provided and can be expanded to insure 100% service level. S-6 can create a new partnership of local, state and federal advocacy for equal justice to all children with handicaps.

SPECIAL EDUCATION - REIMBURSEMENT DATA

Year	Pro Rata	Appropriation
1953 - 54	89.9594848 %	$ 526,000
1954 - 55	78.6035606 %	526,000
1955 - 56	74.2363610 %	675,000
1956 - 57	61.3776061 %	675,000
1957 - 58	57.9545464 %	800,000
1958 - 59	48.41837526 %	800,000
1959 - 60	52.2632029 %	1,000,000
1960 - 61	43.6297142 %	1,000,000
1961 - 62	43.0411301 %	1,500,000
1962 - 63	36.8206314 %	1,500,000
1963 - 64	31.6625509 %	1,500,000
1964 - 65	27.4355804 %	1,500,000
1965 - 66	40.6933220 %	2,500,000
1966 - 67	37.0749015 %	2,500,000
1967 - 68	41.6466905 %	3,500,000
1968 - 69	34.5596378 %	3,500,000
1969 - 70	27.9252815 %	3,465,000
1970 - 71	25.5501590 %	3,465,000
1971 - 72	26.6123997 %	3,665,000
1972 - 73	26.5530808 %	3,665,000

ATTACHMENT II

School District	Average Daily Membership	Classes	Personnel	Individual Programs
Ankeny	3,741	24,775	44,652	6,552
Bondurant-Farrah	658	1,049,158	1,020,148	8,010
Des Moines	42,180	↓	↓	156,027
Johnston	1,249			4,040
North Polk	765			
Saydel	2,297	39,167	59,618	6,243
S. E. Polk	3,331	62,690	27,709	9,146
Urbandale	3,962	9,733	43,201	5,138
West Des Moines	6,527	49,286	45,612	23,652
Ames	5,851	76,795	98,692	22,850
Ballard	1,125			3,746
Collins	246			528
Colo	351			5,487
Gilbert	583			4,682
Maxwell	388			2,072
Nesco	440			7,358
Nevada	1,584	31,072		13,624
Roland-Story	1,060			8,285
County Office			449,305	13,273
TOTALS	74348	1,343,676	1,788,937	300513

Senator MONDALE. We will now hear from Mr. Miller.

STATEMENT OF RODGER MILLER, ASSISTANT DIRECTOR OF SPECIAL EDUCATION, STATE OF NORTH DAKOTA

Mr. MILLER. I am Rodger Miller from North Dakota.

On behalf of our State we thank this committee for the opportunity to testify.

North Dakota has made some progress in carrying out its constitutional responsibility for the education of all children. Progress, however, is a relative term, and the absolute fulfillment of this responsibility is dependent on a characteristic set of problems in a rural State.

Our educational mission has been to serve all children identified as handicapped. Starting in the 1950's up to the present the percentage of children served has very gradually increased. Current numbers of children served are 9,900. This is approximately 30 percent of the estimated total of handicapped schoolage children in our State. The last legislature passed a mandate that all school districts in the State must provide an appropriate education for all handicapped children in their districts. This mandate must be clothed with other concurrent efforts to become a fully implemented law.

I believe there are only two States that don't have mandatory education.

Senator MONDALE. What States are those?

Mr. MILLER. Arkansas and I believe one on the east coast, but I don't really know.

We are very concerned about this mandatory law and carrying it out. It is somewhat nebulous as to whether we will be able to, in fact, carry these out but if we are, in fact, going to these efforts, we will have to provide meaningful and continuing information to the public on understanding the handicapped child and the types of handicapping conditions. They will also have to understand that the handicapped have a right to education; and that they will learn and prosper with appropriate instructional methodology. Making all community service personnel—who are some of the most potent forces in achieving our goal—a target group for information, along with setting well-understood national and State goals, will greatly facilitate this effort.

Second, the distances involved in transporting children to special classes and the many children placed in foster homes for educational purposes make an uncommon finanical demand on State and local resources and make it necessary to deliver program services in a support capacity to the regular classroom. The enabling processes for this type of support are highly qualified teachers and the best possible educational practices in regular classrooms. Our State has a critical teacher need. Projections and current demand far outweigh the present and future projected supply of teachers. In the past, Federal training moneys under title VI-D have been extremely valuable in bringing the present number of teachers into our programs. To upgrade and attract the best possible teacher candidates will require an enlarged continuation of our best efforts at National and State levels.

Third, financial resources must come from all governmental levels to bring about a 100 percent service goal. Our State legislature doubled its fiscal effort to $3 million for the 1973–75 biennium. This figure represents 30 to 35 percent of the excess costs for special education being borne by State government. The remaining 60 to 70 percent must come from county mill levies and school district resources. We must uphold the right of the handicapped child to equal amount of local tax dollars and continue to encourage local financial efforts.

Currently in North Dakota, there are 28 counties without locally financed mill levies to support special education programs. Ten counties are without any type of special education program. In teaching a total service goal, an estimated excess cost figure of $14 million will be required. State and Federal cost sharing must be increased in achieving these goals and guaranteeing school access to every child regardless of local wealth.

Fourth, as well as expanding programs, the quality and structure of programing must be improved. The 1973 legislative mandate also states that each school district must develop a special education plan by 1975. I have included the planning guide with my testimonial statement. This guide outlines planning in nine different areas. The emphasis of this document is on a cooperative organizational structure to insure proper services to all children. This guide also helps establish the structure for complete identification, diagnosis, and individual programs for each handicapped child. This will be the basis for building an evaluation structure for all educational processes that affect outcomes for each youngster.

Committee members, we support the content of Senate bill 6. To be effective in providing such a large portion of the total funding, S. 6 would need to have stability and continuity over a period of some years. We are hopeful that this bill would contain the necessary flexibility to meet the unique needs in North Dakota as well as the needs of States with more concentrated populations. If this is done, most citizens will understand the viable relationship between helping the handicapped child during the developmental period and the later dividends to a healthy and worthy society.

Thank you.

Senator MONDALE. Thank you very much.

[Note: The special education guide referred to above may be found in the appendix.]

[The prepared statement of Mr. Miller follows:]

NORTH DAKOTA
Rodger Miller, Assistant Director of Special Education
Department of Public Instruction
Bismarck, ND
10/19/73

Honorable Committee Members:

On behalf of our state and all handicapped persons, we thank this committee for the opportunity to testify, to state our concerns. Jointly we can construct a future for this significant minority.

North Dakota has made progress in carrying out its constitutional responsibility for the education of all children. Progress, however, is a relative term, and the absolute fulfillment of this responsibility is dependent on a characteristic set of problems in a rural state.

Our educational mission has been to serve all children identified as handicapped. Starting in the 1950's up to the present the percentage of children served has very gradually increased. Current numbers of children served are 9900. This is approximately thirty percent of the estimated total of handicapped school age children in our state. The last Legislature passed a mandate that all school districts in the state must provide an appropriate education for all handicapped children in their districts. This mandate must be clothed with other concurrent efforts to become a fully implemented law.

These efforts will focus on:

1. Providing meaningful and continual information to the public on understanding that handicapped children are present in every community and school; that types of handicapping conditions are diversified; that the handicapped have a right to education; and that they will learn and prosper with appropriate instructional methodology. Making all community service personnel--who

are some of the most potent forces in achieving our goal--a target group for information along with setting well understood national and state goals will greatly facilitate this effort.

2. The distances involved in transporting children to special classes and the many children placed in foster homes for educational purposes make an uncommon financial demand on state and local resources and make it necessary to deliver program services in a support capacity to the regular classroom. The enabling processes for this type of support are highly qualified teachers and the best possible educational practices in regular classrooms. Our state has a critical teacher need. Projections and current demand far outweigh the present and future projected supply of teachers. In the past federal training monies under Title VI-D have been extremely valuable in bringing the present number of teachers into our programs. To upgrade and attract the best possible teacher candidates will require an enlarged continuation of our best efforts at national and state levels.
3. Financial resources must come from all governmental levels to bring about a one hundred percent service goal. Our State Legislature doubled its fiscal effort to three million dollars for the 1973-1975 biennium. This figure represents thirty to thirty-five percent of the excess costs for special education being borne by state government. The remaining sixty to seventy percent must come from

county mill levies and school district resources. We must uphold the right of the handicapped child to equal amounts of local tax dollars and continue to encourage local financial efforts. Currently there are twenty-eight counties without locally financed mill levies to support special education programs. Ten counties are without any type of special education program. In reaching a total service goal an estimated excess cost figure of fourteen million dollars will be required. State and federal cost sharing must be increased in achieving these goals and guaranteeing school access to every child regardless of local wealth.

4. As well as expanding programs the quality and structure of programming must be improved. The 1973 legislative mandate also states that each school district must develop a special education plan by 1975. I have included the planning guide with my testimonial statement. This guide outlines planning in nine different areas. The emphasis of this document is on a cooperative organizational structure to insure proper services to all children. This guide also helps establish the structure for complete identification, diagnosis and individual programs for each handicapped child. This will be the basis for building an evaluation structure including the child and all educational processes that affect outcomes for each youngster.

Committee members, we support the content of Senate Bill 6. To be effective in providing such a large portion of the total funding S. 6 would need to have stability and continuity over a period of some years. We are hopeful that this Bill would contain the necessary flexibility to meet the unique needs in North Dakota as well as the needs of states with more concentrated populations. If this is done, most citizens will understand the viable relationship between helping the handicapped child during the developmental period and the later dividends to a healthy and worthy society. Thank you.

Senator MONDALE. Dr. Maynard.

STATEMENT OF PROF. MAYNARD C. REYNOLDS, PROFESSOR OF SPECIAL EDUCATION, UNIVERSITY OF MINNESOTA

Dr. REYNOLDS. Thank you very much. I appreciate also the time and effort you have given, Senator Mondale and members of the staff, to come here to conduct these hearings, and I am grateful for the opportunity to appear before you.

I have given you a written statement.

Senator MONDALE. That will appear in the record at the conclusion of your testimony.

Dr. REYNOLDS. I'd like to talk very briefly and try to address myself to things that ought to be argued about.

You started this morning with a ringing approval of the legislation. I am sorry that you may end it with the last one on your program saying it is a pretty bad bill.

Senator MONDALE. You can't be a professor at the University of Minnesota and agree with a politician.

Dr. REYNOLDS. I agree so fully with what I know to be your intent and you would want candid expressions.

Senator MONDALE. I heard you were going to do that and we were going to put you off until tomorrow.

Dr. REYNOLDS. I do think that the kind of concerns I have are rising concerns and you are going to face more of the kinds of questions I will raise with you.

Let me say, first off, that I do favor categories, including retarded children whose educations have been badly neglected. What I ask for is a greater job in not carrying those labels down to children and I think that is possible.

Senator MONDALE. One of your fundamental concerns is the labeling problem?

Dr. REYNOLDS. That's right. I think this bit would divide the children of America into two groups that would require petition efforts on behalf of one group and not on the others.

Senator MONDALE. How would you get help to the handicapped without having that label problem?

Dr. REYNOLDS. One of the cases, there is a vignette that I prepared in my paper. The administrator of that program is here. In one of our large suburbs, so-called "learning disabled" teachers who are dealing with child casualties said, "Why don't we go down and work with the kindergarten teachers and expand the individualization and resourcefulness of programs down there and prevent that long period of failure there."

They did so and the results were dramatic. In that case the question is not so much how many dramatically ill children you have but how many cases did you prevent. Now it seems beside the point to decide which ones ought to be put on the roster of the handicapped.

What you have is extending in quite opposite ways the ability of that school to deal with problems.

I want to deliver to you, if I may, this morning, three books. One of them here is edited by my colleague and that tells of a variety of programs in this State and elsewhere, in Texas and Vermont and California, where they have gone about this in a more open way of providing specialized support programs which make it possible to deal with children and not put that label on their backs.

Let me remind you of one other thing if I may. When we get into discussions of the handicapped, even if we are talking about the metropolitan area, the proportion of those who are handicapped, totally blind, and so on is relatively small.

Senator **Mondale**. How many?

Dr. **Reynolds**. No more than a third of that total, I should think.

The parents' group and the others who come here and engage in a discussion with you, in the main, represented the more stringently handicapped. The programs that are launched in response to those pleas have four or five times as much effect in the ghetto as in the schools we represent, so that the labels are extending to many children whom one does not hear so much about and there is that rising chorus in resistance.

An artificial boundary gets asserted in the schools whereby you are enabled to work with children on one side of the boundary and money flows, but very often those boundaries are artificial insofar as the children and the teachers are concerned.

Senator **Mondale**. But you are not arguing that they don't need this. What you are saying is it ought to be given in expanded staff assistance rather than in categories?

Dr. **Reynolds**. I think we ought to be about it in a variety of ways.

Senator **Mondale**. Why don't you start telling us?

Dr. **Reynolds**. I have given you one as in Bloomington.

The story is told in here of the whole city of Houston where they are using special education categorical means. They have put their psychologists and counselors to a job of designing a system of retraining the regular staff of the schools to make them more aware of children who are exceptional and whose education is not progressing well. They have developed several teacher development centers. The teachers of that whole system are equipped with new insights and skills.

They go back and their school buildings become different places and they found it possible, in that arrangement, they have found it increasingly possible, to accommodate numbers of children who might otherwise be identified as casualties and have been displaced to special kinds of arrangements.

I think there is increasing awareness that what we have to do is influence that whole system of education to make it more accepting, more inclusionary in attitude; to enhance the skills of that main group of teachers in order to deal with exceptionality, and our problems are not well defined.

Senator **Mondale**. Plus money, too?

Dr. **Reynolds**. Yes.

Senator **Mondale**. If you have a severely handicapped child, you need special equipment, insights, therapy, and all sorts of things that cost money, so you need the attitude, the training, and the money?

Dr. **Reynolds**. I guess the thing that I am appealing for is a much more open notion of how to use that rather than creating a roster of handicapped children and say that the money may be used to serve those children and not for other purposes.

Senator MONDALE. In that problem with title I, they say it is illogical to say that educationally disadvantaged children can be defined by income definitions and that's correct; yet, if it were not for title I there would not be this bill that has been flowing into our school systems to concentrate on the poor children.

I guess what I am asking you to do with me is to deal with political problems. How do you generate funds to bring the special help to these children that they need?

Now, part of it is attitude and part of it is this openness, but how do you get the money? That is what bothers me. It is so hard to get a flag that people can march with and with generalized institutions, I don't think you are going to get anything through the Congress.

Dr. REYNOLDS. I think you get through the Congress programs dealing with heart attacks, cancer, and strokes. You expect them to engage in a wide set of programs that would reduce heart and cancer problems as well as focus on the special services. It seems to me the discussion can go forward in terms of poor children, retarded cognitive development, learning disabilities, children who are hearing and visually handicapped and a variety of other kinds of problems, but it is not necessary for the program to run forward in those several categories.

In 1957, Senator, when you were in this State and Governor Freeman was the first administrator of the program in this State, we took the labels off the children. The Minnesota law reads, "Every school district"—in unorganized territory—"shall provide (suitable) education for all handicapped children. The State shall pay two-thirds the costs of essential personnel and half the cost of supplies and equipment."

The money follows the person in that case. The essential personnel in Bloomington go to preventative programs as well as to children with casualities, and we are able to say that is a wise kind of program, before the kids get a label.

So one of the ways that this can be done, and we have had experience with it for 15 years and we may be leading the Nation as far as special education is concerned, is just to move the money flow off the child-labeling category.

Senator MONDALE. Let's just say, look, the Federal Government ought to pay a third of the cost of operating schools and just send it to the schools as long as they don't discriminate and let them argue over how they should allocate it and that will give you the muscle you will need to initiate these things.

The problem is that is about a $10 million bill and that is not going to happen. So we are wrestling with the question of how can we provide a little more money out of this budget and how can we structure it so we have a chance of winning something for schoolchildren?

Maybe there is another way of doing it, but I have found of late that you have to be very specific. It has to be bilingual education, and you have to be very specific. These have to be poor children who come to school and do not speak English and they have to be taught by a teacher who speaks their language. Everybody understands that.

We are not speaking of something big, but we are talking about more than we had 5 years ago. How can we get some political clout behind the effort?

Dr. **Reynolds**. Can't you discuss the problems of retardation, learning disabilities, much as we discuss the problems of heart, cancer, and strokes and write legislation which is more open and requires pragmatic plans and attends to the needs of children with the most restrictive handicaps and other children as well in more open ways?

I think we must do that because the problem of creating rosters of handicapped children at this point in our history is just not acceptable. When the Federal legislation comes across with that, you are just going to have turmoil, particularly in the larger cities.

I think I should not comment so much.

Senator **Mondale**. What you say is very persuasive in an ideal sense of the school setting, but I am afraid it gets too diluted in a political sense in that we can't generate the pressure that we need because it is very hard to get money out of this administration for education.

Mr. **Contrucci**. Senator, let me comment.

That is one of the real concerns that chapter 89 of Wisconsin has. This is basically what we call the parent bill because one of our State senators worked very closely with the parents. We are charged in the State department, and we have an advisory committee made up of a heavy representation of the consumer, and we are charged with carrying through with the education of the handicapped children and removing the categorization of the children.

We are responsible for the program that we deliver to the school districts. If it is determined that we are doing business on categories and not on children and there are exceptional educational needs, we will stand indicted or we will have to be very careful as to how we account for moving to noncategory issues of services.

What we require is accountability for creative management of education and somehow or another the selling of the handicapped should be a challenge to the system for creative management of an educational system.

Perhaps what Maynard is pleading for is you have to put some hookers in there so——

Senator **Mondale**. Creative management is very hard to enforce, even though we have an abundance of it at the Federal level.

I remember a few years ago we had hearings on bilingual education and many Chicano teachers in Texas said they had a law there for exceptional children. They were $5,000 ahead so they took all of the Mexican kids and herded them into that class to get that State aid. Many of them, as soon as they heard they were subnormal, believed it and there was much damage to them. I think we want to be careful not to create incentives that may be damaging.

With hard-pressed school districts, I imagine this excess spending—I don't know whether that creates a similar problem or not.

Mr. **Miller**. Yes.

Dr. **Reynolds**. I think that the places that are really moving now are like Texas and Vermont and, to a very considerable extent, Minnesota; California has a new plan on the threshold which would be in accord with the things I am concerned about.

Within the parent community there is a rising chorus of concern for support and some things are going to be politically persuasive which have not been in the past.

Senator **Mondale**. I'm always impressed with local authorities. I remember Lyndon Johnson when he took his first job as a teacher. He was asked, "Do you teach that the world is round or flat?" He said, "I'm taught to teach it is either way" and a lot of our school districts are pretty good at that.

Dr. **Gibson**. We in the field recognize the tremendous job that the teacher trainees have done. They have these people coming out of a training institution today who are certainly much better than I was 20 years ago, and I think that is the way you have creative opportunities and administrators who are also creative. They will find the ways in which we can find a psychologist and put them into the classroom to find these children.

[The prepared statement of Dr. Reynolds follows:]

Statement

before the

Subcommittee on the Handicapped

of the

Committee on Labor and Public Welfare,

U. S. Senate

Submitted by:

Maynard C. Reynolds, Ph.D.
Professor, Special Education
College of Education
University of Minnesota

I am grateful for your time and effort to make possible these hearings in St. Paul on S.6, and for the opportunity afforded to me to present my views on the Bill. I have identified myself as a Professor at the University of Minnesota but the views I present here are my own and not those of the University or College of Education.

According to my calculations, the numbers of handicapped children receiving special education has increased more than 600 percent over the past 25 years. Since 1958, the Federal Government has supported this development through Congressional enactments and executive implementation. Lately, the Federal courts have added a strong new force to the interpretation of education for handicapped children.

In my considered judgment, S.6, in its present form, is not a satisfactory expression of the educational needs of handicapped children in our society at this time. The Bill proposes certain provisions which would reverse present tendencies in education.

1. The Bill provides incentives for the negative labeling of children, a practice which large numbers of educators consider unnecessary and degrading to children and which is being phased out of many school districts.
2. The Bill would create a public roster of handicapped children -- a negative concept. Such a roster could not be managed in a decent way and it probably would incur serious objections from many parents and professional persons. I myself would refuse to participate in such a procedure.
3. The Bill would create or solidify artificial boundaries in the schools between regular and special education which would have the effect of limiting options for many children at a time when we ought to be working to open boundaries and increase educational options.
4. The Bill fails to give attention to early education and to preventive programs, which means that children would be neglected until they present themselves as full-blown casualties.

Let me present to you, in the form of several brief vignettes, some illustrations of what I consider the Bill's inadequacies. Consider first the following situation:

> ...Teachers of so-called "Learning Disabled" children in one of our large suburbs decided that instead of dealing with children as academic casualties at the 3rd or 4th grade level they would go into kindergarten and first-grade classrooms in the Fall of each school year and team up with regular teachers for a period of time to meet the diverse learning needs of the children. The logic was simple: If special methods were successful later, why not supply the

> methods earlier so that appropriate learning could take place in the first instance and without the experience of a long period of failure. The teachers tried the plan and the results have been positive and dramatic. No child is ever labeled as a "learning disability" case; instead, all children are considered to need different educational diets.

As I read S.6, supports would not go to such an early intervention program -- a preventative approach, because it would yield no roster of the handicapped. No child would meet the definition proposed in the Bill.

> ...A special teacher in a rural area's schools is working to support several mentally retarded and emotionally disturbed children who have been transferred to regular classes. These handicapped children need extra help in academics and a few other program modifications. As the special teacher works with them, she and the regular classroom teacher realize that several minority group children from economically deprived homes with previous poor schooling could also benefit from the individual and intensive special help. In that state, however, for the minority children to be eligible for special help they would first have to be given a handicapped label. Neither the children nor the teachers need those labels, only the state law.

In this example, a special boundary has been inserted between teachers and children which seems irrelevant educationally; the boundary is there because the money flows on only one side of it. S.6 would operate on behalf of only some of the children needing special help and it would discriminate against the others in the same way that the state law does.

> ...A consultant in a Western state is able to offer special education to many Indian children only by reporting them as "handicapped"--using one of the common categorical labels for them. However, he is experiencing a rising negative feeling among parents, not because they do not want the resources and help for their children, but because they object to the labeling which is the starting point of the enterprise. Because of this opposition, the consultant may be forced to withdraw his services from the children.

Since S.6 also specifies the labeling of children before they can be eligible for special education services, it can be anticipated that many parents will resist the labels and, consequently, needed services would be withheld from the children.

> ...A large city school system enrolls Black children in EMR (educable mentally retarded) and ED (emotionally disturbed) special programs at two to four times the rate applied to white children. The parents want the special services for their children but they resist the labeling process; they have issued a virtual mandate to the school superintendent that there be no more labeling and "special education."

These cases are not hypothetical. All of them can be documented. Nor are they minor exceptions to the general substance of special education. They are typical of the situations of educators and children who are trying to solve educational problems under great difficulties.

Education for the handicapped has come a long way: from total neglect initially, to special centers for the severely handicapped which were created mostly in the late 19th century, to special classes in local schools. The current trend, supported by the Courts, is to move handicapped children into regular programs in more inclusive ways. In the very process of bringing children with diverse needs into the regular institutions of the community, we have learned, I think, that the old boundaries are worse than useless; they are a disservice to children in that many problems can be prevented and that children need not be labeled and displaced to special centers as was done so frequently in the past.

S.6 would divide the school children of the nation into two groups: the handicapped and "others." The handicapped would be required to meet categorical criteria. Consequently, more money would go to school districts which inflate their rosters on the handicapped side. Although the Bill speaks of integrating the handicapped into regular education, it would permit such integration only with labels.

There are alternative approaches that would better serve the children involved. The most straightforward of these is not just an idea. It has been implemented, at least in part, in Minnesota since 1957. With some paraphrasing the basic Minnesota law in special education reads as follows:

> Every school district shall provide [suitable*] education for all handicapped children. The State shall pay two-thirds the costs of essential personnel and half the cost of supplies and equipment.

The essence of the law is simple but, of course, it is implemented within a framework of complex programatic plans which administrators can shape to make certain that children with the most complex problems are given first priority. The key idea is that by using a basic unit of financing other than the child-in-category, possibilities are opened of serving exceptional children in diverse ways as, for example, in early preventive programs and in all of the other kinds of situations exemplified in my illustrative vignettes.

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*Word added to reflect court interpretations.

There are still other educational alternatives for handicapped children. The most promising, I believe, is simply to permit agencies to submit programmatic plans with costs attached. Portions of the costs could then be covered by the state or Federal Government. I will not take the time now to elaborate further on alternatives, except to say that they are there. None entails neglect of the severely handicapped and none lacks accountability features. In fact, they can have the result of restoring leadership attention to the real effectiveness of programs for children who have special needs, rather than to consume leadership time merely in the regulation of categories and other boundary lines, which now occurs to such a terribly burdensome and wasteful extent.

We, at the University of Minnesota, have been enabled, through a Federal Grant, to bring together and publish some of the alternative plans by which exceptional children may be served without negative labeling. I submit with this statement two books and a manuscript which explore and report on these innovative efforts.*

Another aspect of the Bill which I think presents serious difficulties is the provision that would require an individual educational plan to be made up for each handicapped child. Again, I object to the two-system theory: one for the handicapped and one for others. But there is an important and valid idea here; I share the belief that schools must become much more responsive to children and parents and even that written, agreed-upon plans with formal due process available, as necessary, are a very good idea.

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*
1. M. C. Reynolds & M. D. Davis (Eds.) Exceptional Children in Regular Classrooms. Minneapolis: Dept. of AudioVisual Ext., U. of Minnesota, 1971.
2. E. N. Deno (Ed.) Instructional Alternatives for Exceptional Children. Arlington, VA: Council for Exceptional Children, 1973.
3. Jack W. Birch, Mainstreaming Retarded Pupils: The Special Education of Educable Mentally Retarded Pupils in Regular Classes (in manuscript).

The problem is that if you mandate the "individualized plan" everywhere for all children at once it will turn the whole process into nonsense. People are not ready for it. For example, one of the critical problems of such plans will be to set long-range goals individually for each child. I happen to believe that schools should equip children with the basic tools of their culture and give them opportunities to explore many fields by such processes that the children are enabled to set their own life goals. However, when school teachers and personnel workers are highly specific about long-range goals, there is a tendency for the goals to become predictions, and for the predictions to become statements about the capacities of the children.

Nothing causes us more difficulty than the attempts now being made to specify the capacity of a child or to write his history in advance. Psychologists and educators have ways of taking credit for outstanding teaching when a child surpasses his capacity, and for giving the child a label (underachiever or learning disabled) when his performance falls short of the prediction. Prof. Thorndike of Columbia University rightly noted that such children may well be labeled over-predicted, putting the onus on the psychologist, rather than underachievers, which puts the onus on the children. All of us are aware of how resentful minority group parents have become about the limited predictions and expectations set for their children.

The point is that the field of education is only barely able to begin doing sensible things about contracting with parents for their children's short-range goals and objectives. These procedures can be managed only with the careful reeducation of teachers and other school personnel. I wish very much that you would encourage and enable one or several states to try this kind of activity in a whole state and calculate what is required in the way of teacher reeducation and technical assistance in order to come out with successful results. With the background of work in even one state, it would be possible to calculate requirements and launch a program on a national scale. Thus, I urge you to encourage the U.S. Office of Education to further develop and test the idea but not to write it into law for immediate widespread implementation.

This Bill is not yet in good form. It proposes a broad and generous expansion of the federal partnership in meeting the educational needs of exceptional children, but it is oriented in such a way that it will have an unfortunate segregating effect. It creates two classes of children in America.

I think you will find many people who are afraid that the more open approach to the field such as I propose may lead funds and attention away from the handicapped children with the severest problems. They want to be sure that we attend to children with the clearly distinctive needs; and I do, too. However, I believe that their fears are unfounded for the following reasons: (a) our experience in Minnesota, where we have made better than average progress in serving severely handicapped exceptional children under a more open statute; (b) recent court directives, as in the Pennsylvania and District of Columbia cases, which have become persuasive throughout the nation; they have induced a strong surge of work on behalf of the severely handicapped because the courts have created a new force for attending to the severely handicapped; (c) administrators of programs can always monitor them and act to assure adherence to Congressional intent.

Finally, there is, I think, the whole movement in our society to move people with some aspect of differences out of their forced enclaves of the past; institutions are emptying back to the community and set-aside programs are emptying back to mainstream institutions. The schools are only a part of that healthy change.

Let us not insist upon rosters, categories, and basically different systems of management for the handicapped. There are alternative systems and I think Minnesotans can tell you about some of them. Many of my colleagues in the state, I know, would be very proud to assist you in learning more about our activities on behalf of all handicapped children.

As a special educator, I am certain that I can speak for many of my colleagues in commending you for your interest in and concern for the exceptional children of this nation. Sadly neglected in the past, these children need all the help the Federal Government can give them and the school systems who seek to educate them.

Senator MONDALE. We must adjourn at this point.

I would invite anybody in the audience who has not been asked to testify if they would like to submit something for the record, they may do so. If they would like to send it, we would be glad to include it in today's record.

[The prepared statement of Dan DeLong, on behalf of the South Dakota Association for Retarded Children, follows:]

Prepared Statement of Dan DeLong, Executive Director, South Dakota Association for Retarded Children

Senator Mondale, members of the Subcommittee on the Handicapped, I am here today representing the South Dakota Association for Retarded Children and it is indeed a honor for a representative of our Association to appear on behalf of all handicapped children in South Dakota to testify in support of S. 6.

Our position as the largest advocate organization in South Dakota representing a segment of the handicapped population has enabled us to work effectively for all handicapped children and it is in this capacity that we are here today.

In review S. 6, we are extremely encouraged by the provisions of Section 6 (Eligibility). Many of the provisions of this section are, when considered in relation to their potential impact on the quality and quantity of services for handicapped children, revolutionary in nature. We are particularly supportive of paragraphs (1), (2), (3), (4), (5), (6), (7). The importance of a policy of free public education which emphasizes parental involvement and approval, and which affords the handicapped child with due process safeguards, cannot be understated. We see the provisions of Section 6 as requiring LEA's to be fully accountable to the child and his parents in regard to the provision of an appropriate education. This is both acceptable and long overdue.

As you are aware, presently a significant number of court cases are being heard across the nation which address themselves to the philosophy expressed in S. 6. Specifically, the right to a free compulsory public education for handicapped children, the right to fair classification, and the right to treatment for institutionalized handicapped children. As you are also aware, in several of those cases, the Association for Retarded Children has been involved in an attempt to expedite the extremely slow progress being made in some states regarding the provision of an acceptable level of educational services for handicapped children.

We have been fortunate in South Dakota to have successfully passed mandatory special education legislation which requires the provision of appropriate educational opportunities to all exceptional children from birth to 21 years. Since the passage of that bill in 1972, rapid progress has been made in the development of public school programs for handicapped children, but still it has not been enough. DHEW estimates indicated that only 24.8% of our handicapped children are receiving appropriate educational services. We feel that that estimate may be too high and that the actual figure is closer to 20%. Leading special education experts in our state estimate that more than 5,000 handicapped children will exit from our school systems during the next four years almost totally lacking in skills which will allow them to move into competitive employment areas or successful adjustment to community living.

As an advocate group, we are in the business of making ideals become realities. We recognize that it is ideal that all handicapped children receive a free public education, and in our efforts to make that a reality, we have had to face some very harsh realities about education in a rural state with large impoverished areas.

LEA's have not, in all cases, been physically capable of increasing their tax-support base to adequately accommodate the excessive cost of providing education for the handicapped child. There has not been sufficient incentive to encourage them to take the necessary steps for provision of a full range of needed educational services. We will be working this year, for instance, to increase the amount of available reimbursement to the LEA's. But, even with an increase in the percentage of state reimbursement, we see little opportunity to significantly increase the percentage of handicapped children receiving educational services. The excess costs incurred in providing special education services have simply been beyond the means of many of our LEA's.

In South Dakota, a school district may levy up to 2 mills for the provision of special education services, yet, out of the more than 195 school districts, we find that only 9 actually do levy this figure and that only 25 levy one mill or more. In visiting with the administration of a number of those districts. I have found that the LEA is really committed to the idea that handicapped children should have a free public education but they simply cannot raise the necessary tax support to enable them to meet the needs of their handicapped children.

The Developmental Disabilities Advisory Council has designated 53 of our 67 counties as poverty areas. It would appear that an average of 15% of the families in South Dakota have an income below the federally defined poverty level. We also have an undesignated number of families with incomes just above the poverty level. These are grim statistics indeed, but they do comprise the harshest reality that we face in upgrading special education in South Dakota.

In conclusion, we are most pleased with S. 6 as written. We are highly encouraged to think that a major federal commitment to handicapped children may indeed become a reality.

We concur with the recommendation made by Mr. Elsberry that the age should be changed from "aged three to twenty-one years" to "birth to twenty-one years". Our feeling is that many pre-school handicapped children will require pre-school educational opportunities if they are to successfully enter the public school system into an integrated program as S. 6 envisions. In addition, we strongly believe that the LEA should make a commitment to the severely and profoundly handicapped pre-school child and his family if we are to successfully achieve President Nixon's stated national goal of enabling one-third of the more than 200,000 retarded citizens in public institutions to return to useful living in the community. We believe that many families, if given assistance with their severely and profoundly handicapped child during the first three years of the child's life, can successfully maintain that child within the family unit. S. 6, if expanded to include the handicapped child below three years of age, will have created a viable, alternate method of reducing the population of our large public operated institutions.

I can assure you that the South Dakota Association for Retarded Children is highly supportive of S. 6 as presently written and with the modification which we have suggested, we feel that S. 6 will become a landmark bill in the field of education for handicapped children.

Senator, I would like to thank you and the members of your committee for this opportunity to appear before you in behalf of the handicapped children of South Dakota.

Senator MONDALE. I would also ask you, those who are representing the respective States, it would be helpful if your superintendent and director of education or your Governor would send us a proposal in support if this legislation.

I know Governor Lucey and others are in support and it would be very helpful to us if their personal support could be coupled with Governor Anderson's to show that there is interest in the Midwest. It would be very, very helpful.

Additional material subsequently supplied for the record may be found in the appendix which follows.

Thank you for coming.

[Whereupon, at 12:10 o'clock p.m., the hearing was adjourned.]

[Appendix follows:]

APPENDIX

Ms Ruth Myers, Coordinator
Indian Adult Basic Education
217 North 4th Avenue West
Duluth, Minnesota 55806

November 16, 1973

Ms Ellen Hoffman
Senator Walter F. Mondale's Office
United States Senate
443 Old Senate Office Building
Washington D.C. 20510

Dear Ms Hoffman,

This is to be entered into the record of testimony on S-6, St. Paul, Minnesota: October 19, 1973.

In the past several years the state of Minnesota has made significant gains in the field of Indian Education. Problems have been isolated and systematically attacked tho' not alleviated completely. Money has been found and spent in many problem areas. Experience, trained Indian staff has been recruited thereby upgrading Indian education in the state of Minnesota.

Conventional wisdom indicates however, that the needs of Indian children in the area of special education has not received the attention it deserves. Traditional testing and evaluation procedures appear to be utilized and administered in such a way that they are racially and/or culturally discriminatory.

A school district in Minnesota realize the enormity of the problem when a situation developed through the interest of local Indian parents. Questions were asked regarding a particular child who was placed in special education even though his IQ test score was considered norman. Yet the child was placed in a special education catagory when bery young and subsequently members of the same family were placed in special education. The questions raised by interested members of the Indian community could not be answered by school district personnel. A workshop on special education followed the airing of this issue. It was evident throughout the workshop that information was lacking in all areas of special education regarding the special needs of Indian children. Approximately 20 school districts sent representatives to the workshop because of their problems in this area.

At this time the number of Indian children in special education classes is not known. The catagories for placement are not known, the number of teachers and other concerned personnel specially trained to teach the culturally different is not known, the existance of special training for the culturally different is not known and the possibility exists that Indian children are erroneously placed in special education because their behavior patterns may differ from other children and special education may be the collection bin for these children.

There is a belief that Indian students because of their Culture are "handicapped" in white educational institutions. Which causes Indian students to be misunderstood, misplaced and misspent.

The struggle for the Indian student to survive in mainstream education takes all the funds and energies available now.

There is no method for the delivery of specialized services to meet the special needs of Indian students as it applies to education for the handicapped.

No one section of the nation can state how the problems should be attacked and resolved nationally for all the Indian tribes, organizations and groups.

The time is long overdue for education policy makers and education funding sources to wrestle with this enormous problem confronting Indian students and provide funds to deal effectively with it.

I commend the efforts of the bill S-6, but, now must ask that the neglected population of the Indian exceptional children be considered.

Thank you very much for your consideration in this matter.

Sincerely yours,

Ruth A. Myers

Ms Ruth Myers, Coordinator

[illegible]/clh

1303

LOOKING AT HOW TO FINANCE THE EDUCATION OF THE HANDICAPPED

by

Ms Nora L. Hakala

October 19, 1973

LOOKING AT HOW TO FINANCE THE EDUCATION OF THE HANDICAPPED

The National awareness and concern for the Native American is growing. Along with this awareness and concern, there is a critical need for Program monies to meet the special needs of the Native American children.

The top priority should be to provide services for children not now receiving services. It is in this category that Native American children fall.

I am aware that the needs of all handicapped children are not being met, in some states only one-half of the handicapped children are being served. In order to meet their needs, a greater financial allocation is needed.

Since the overall need is so critical, this results in placing the needs of the Native American in the lowest priority.

The scope of the problem facing the Native American in relation to Special Education has never been assessed.

It is my contention and that of many other Native American people, that our children are not all handicapped in the physical sense of the word, but they are handicapped as human beings when they enter the present school systems. When Native American children come in contact with the present standardized psychological and achievement tests they are handicapped because these are inappropriate for Native American children in that they are culturally biased. It is imparative that funds be allocated for research and design of instruments that will better assess the learing and strengths and weakness of Indian children.

In the Northeastern region of Minnesota, in which I work, the only highly developed Special Education Programs is in Duluth, our one city of the first class.

Duluth like many large cities carries a to heavy burden and is unable to provide all the services that handicapped children need. We feel that the Legislation should be modified so the quality Programs can be provided.

In the area of Speech Therapists, Duluth is now serving 750 children and a conservative estimate is there is 1,200 or more in need. We are aware that 38 Native Americans of the 750 are now receing speech therapist help. We are unable to assess how many more Indian Children are in need of services such as this. This is only one isolated example in one community. It serves to point up the fact that in the State of Minnesota, we at this time do not know the scope of the problem the Native American faces in Special Education.

Hopefully, adequate funds will be made available so that the needs of the Native American child will be met.

GUIDELINES

SPECIAL
EDUCATION
IN NORTH
DAKOTA

a part of the whole

GUIDE I - SPECIAL EDUCATION

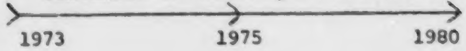
A Continuum of Planning and Services

DEPARTMENT OF PUBLIC INSTRUCTION
Bismarck, ND 58501

M. F. Peterson, Superintendent

SPECIAL EDUCATION

Continuum of Planning and Services



Special Education Staff:

Janet M. Smaltz, Director of Special Education
Ida Schmitt, Assistant Director of Special Education
Rodger Miller, Assistant Director of Special Education
Ed Maurin, Coordinator, Regional Resource Center
Peter M. Gefroh, Coordinator, Title VI-B

July 1, 1973

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INTRODUCTION

The Forty-Third Legislative Session enacted significant legislation concerning the right of every handicapped child to an appropriate education. By receiving an appropriate education, the handicapped child will have the possibility of a more rewarding life and add his contribution to that of every other citizen in North Dakota. This legislation requires that each school district develop a special education plan and submit it to the Department of Public Instruction by July 1, 1975.

The implementation of an approved plan will increase the quality and depth of programming for every handicapped child and will guarantee that each child will be receiving services prior to the implementation deadline, July 1, 1980. For some school districts the next few years will be a time of beginning services and for others it will be a period of strengthening and expanding special educational programs already operating. This will be a period of hard work and the opening of exciting vistas for all concerned with the education of each child.

About Planning

Clear and purposeful planning is the objective of this manual. All areas, as outlined on the following pages, are to be considered in relation to handicapped children in the school district.

First of all the task will require an organizational structure which will provide a large enough student enrollment base and resources to carry out a complete special education program.

Each county has, by law, a special education board which for many schools will be the focal point of special education planning and programs. Multi-county planning arrangements are possible. Planning may also be done by cooperating school districts or single districts. Whatever the agreed upon planning arrangement, input and consultation will have to involve all school administrators, as each school district is responsible for submitting a plan to the Department of Public Instruction.

Planning will include three steps:

Step I - The plan required by 1975 will set forth:

1. A STATEMENT OF PHILOSOPHY
2. ORGANIZATION FOR SPECIAL EDUCATION PLANNING AND PROGRAMMING
3. PROJECTION OF EDUCATIONAL NEED
4. IDENTIFICATION OF HANDICAPPED CHILDREN
5. PLACEMENT OF IDENTIFIED HANDICAPPED CHILDREN
6. RECORDS OF HANDICAPPED CHILDREN
7. COOPERATING AGENCY SERVICES
8. FINANCING SPECIAL EDUCATION
9. EVALUATING SPECIAL EDUCATION

Step II - Yearly applications for approval of program with detailed information concerning special education staff facilities, curriculum, and program. This information will be similar to that currently required for all approved programs.

Step III - Year erd reports will include information on:

1. Teachers
2. Students
3. Financial Report

This information will be used as feedback for future planning and the development of statewide information on special education programming.

This planning booklet is concerned with Step I only. In many school districts the 1973-74 school year will be used for organizing and planning services. State Department personnel will be available for consultation. As planning progresses a director of special education should be considered to facilitate full program implementation at the local level.

Each section of this manual contains three parts - a planning goal, planning guidelines, and planning objectives; the fourth part is a local plan - the planning product. It will show your plans in each area and will be submitted in the separate booklet provided for that purpose. (Request A PLAN FOR SPECIAL EDUCATION from the Department of Public Instruction).

Special Education Laws

The law for special education is in Chapter 15-59, North Dakota Century Code. The Forty-Third Legislative Assembly, meeting in 1973, passed legislation which requires school districts to provide special education for all handicapped children. The same law (Chapter 15-59 NDCC):

1. Makes it permissive for school districts to provide education programs for gifted children.
2. Requires school districts to keep records for all handicapped children in the district.
3. Defines: "handicapped child"
   "exceptional child"
   "special education"
   "gifted child"

4. Sets up county special education boards and permits three mill county levies for special education if approved by the voters.

5. Permits three mill levies for special education in school districts where there is no county special education levy.

6. Designates a state advisory council for special education.

7. Provides for a director and staff in the Department of Public Instruction for the purpose of setting standards, approving programs, and establishing regulations.

8. Establishes state's eligibility for federal aid.

9. Sets limits of funding per child from state funds.

10. Puts educational standards for state institutions under Department of Public Instruction.

Mandatory Provision and Timeline - Section 15-59-04 states that "school districts shall provide special education to handicapped children" and "in so doing may act jointly with one or more other districts."

1. A plan for special education shall be submitted to the Department of Public Instruction by the district by July 1, 1975.

2. The plan shall be fully implemented by July 1, 1980. (Refer to Appendix page 43 for complete law).

Go through the planning document step by step and submit one copy of your plan to the Department of Public Instruction and keep one copy on file in the school district.

PART I - A STATEMENT OF PHILOSOPHY

Planning Goal	Planning Guidelines
Develop a statement of philosophical commitment to the education of handicapped children which will be the basis for a special education program.	Set aside an hour at your first meeting for discussion of the scope and purpose of a special education program.

PART II - ORGANIZATION FOR SPECIAL EDUCATION PLANNING AND PROGRAMMING

All plans submitted to the Department of Public Instruction will be organized on a minimum basis of 1,500 regularly enrolled elementary and secondary students. School districts with enrollment below this minimum number must take cooperative arrangements for planning and implementing special education programs.

Planning Goal	Planning Guidelines	Planning Objectives
Organize and develop a service area which is large enough to provide a comprehensive quality special education program for all handicapped children.	Four organizational patterns are possible:	Name all school districts involved in this plan.
	·Single district ·Cooperative arrangements between two or more districts. ·Single county ·Multi-county	Name one administrator (superintendent, county superintendent, or director of special education) by position and name, who will be responsible for the special education plan as given in this document.
	Representatives from all districts and counties involved should meet over a period of several months for planning. It is important to organize the planning effort using sub-committees to gather information.	Give total number of planning meetings.
	See page 6 for expected numbers of handicapped students based on 1,500 regular student enrollment.	

PROJECTION OF PROGRAMMING BASED ON STUDENT ENROLLMENT

HANDICAPPING CONDITION	REGULAR STUDENT ENROLLMENT	EXPECTED PERCENTAGE	NUMBER OF STUDENTS	PROGRAM POSSIBILITIES
Trainable Mentally Retarded	1,500	.25%	4	Would necessitate sending students to other district or county programs.
	3,000	.25%	8	Should arrange on cooperative basis for larger program with 16-30 students for three trainable classes.
Educable Mentally Retarded	1,500	2.00%	30	Sufficient for two levels of programming (elementary & intermediate) should arrange for high school students to attend a comprehensive high school program.
	3,000	2.00%	60	Sufficient for all age ranges and flexibility of programming (special classes and resource room).
Specific Learning Disabilities	1,500	5.00%	75	Sufficient size for resource/itinerant services and resource room for a few students.
	3,000	5.00%	150	Sufficient size for resource/itinerant services and resource room for a few students.
Emotionally Disturbed	1,500	3.00%	60	Sufficient for resource/itinerant programming.
	3,000	3.00%	90	Sufficient for resource/itinerant programming.
Speech Impaired	1,500	5.00%	75	Served on itinerant teacher basis.
	3,000	5.00%	150	Served on itinerant teacher basis.
Hard of Hearing	1,500	2.00%	30	Speech clinician in resource/itinerant program.
	3,000	2.00%	60	Sufficient number for resource/itinerant programs.
Deaf	1,500	.10%	2	Would necessitate programming on basis of 9,000+ student enrollment basis. Placement at School for the Deaf or large county/school district program.
	3,000	.10%	3	Would necessitate programming on basis of 9,000+ student enrollment basis. Placement at School for the Deaf or large county/school district program.
Partially Sighted	1,500	.06%	1	Not sufficient for full time program.
	3,000	.06%	2	Resource/itinerant program.
Blind	1,500	.02%	0	Would require regional/multi-regional programming. Some students may attend School for the Blind.
	3,000	.02%	1	Would require regional/multi-regional programming. Some students may attend School for the Blind.
Crippled	1,500	.50%	8	Resource/itinerant program and some hospitalized/homebound or placement in private school.
	3,000	.50%	15	Resource/itinerant program and some hospitalized/homebound or placement in private school.
Other Health Impaired	1,500	.50%	8	Minimal modification of program by resource teacher - a few students will require hospital/homebound instruction in this area.
	3,000	.50%	15	Minimal modification of program by resource teacher - a few students will require hospital/homebound instruction in this area.

PART III - PROJECTION OF EDUCATIONAL NEED

Planning Goal

Determine expected number of handicapped children as a planning base for a complete special education program.

Planning Guidelines

Numbers of handicapped children based on incidence figures may vary in each local area. However, North Dakota incidence figures as used in this booklet have been shown reliable and should be used as a basis for planning.

If you have questions about each of the categories of handicapped children refer to definitions on page 8.

Collect data on children already identified as handicapped from school records, agencies and other sources. Data on individual children is confidential. Information to be used for planning should be in summary form (age, sex, handicap) and should be filed carefully.

Compare collected data with projected data. This will give your planning group an idea of the completeness of present information.

Planning Objectives

Complete page 10 using the student population of your planning unit. Show in columns E, F, and G your expectations for services to students each year considering all program resources. This is intended as a planning device-many variables may affect these projections.

Complete page 11 which will show numbers and priorities of teachers to be hired over a seven year period. See page 12 for suggestions on use of personnel in school systems of varying enrollment. This may also be used as a guide in determining the function of special education personnel. Also, refer to Blue Book (Guides to Special Education) for job description for each level (Levels I, II, III, IV).

DEFINITIONS OF HANDICAPPED CHILDREN

1. Trainable Mentally Retarded

These are the children in the 30 IQ to 50 IQ range, having ability limited to nonacademic skills. They may be taught self care, social adequacy and manual tasks. Even though they may be under supervision throughout life they may be expected to become partially self-sustaining.

2. Educable Mentally Retarded

These are the children in the 50 IQ, 60 IQ and 70 IQ range, having educability in the social area and who can learn academic skills with some limitations. They can be expected to become wholly or partially self-supporting in adult life.

3. Learning Disabled

Children who are said to have special learning disabilities when they have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect function in listening, thinking, speaking, reading, writing, spelling or doing mathematical calculations. Such disorders include conditions described as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia but do not include those with learning problems primarily the result of visual, hearing or motor handicaps, of mental retardation, or emotional disturbance or of environmental disadvantage. (NINDB Monograph No. 3)

4. Emotionally Disturbed

These are the children who demonstrate one or more of the following characteristics to a marked extent and over a period of time:

a. An inability to learn which cannot be explained by intellectual, sensory or health factors.

b. An inability to build or maintain satisfactory inter-personal relationships with peers and teachers.

c. Inappropriate types of behavior or feelings under normal conditions.

d. A general, pervasive mood of unhappiness or depression.

e. A tendency to develop physical symptoms, pains, or fears associated with personal or school problems.
(Bower, 1969)

5. Speech Impaired

   These are the children whose speech is defective to the extent that it deviates so far from the speech of other people that it calls attention to itself, interferes with communication, or causes its possessor to be maladjusted.

6. Hard of Hearing

   These are the children with hearing losses so severe that they interfere with communication and with the normal development of language and speech and require special equipment and special instruction.

7. Deaf

   These are the children in whom the sense of hearing, either with or without a hearing aid, is insufficient for interpreting speech.

8. Visually Impaired

   Children with 20/70 vision in the better eye after corrections are considered as partially sighted. A blind person is defined as one with measured loss of 20/200 or less in the better eye after the best possible correction or a restricted field of vision of 20 degrees or less.

9. Crippled

   These are children who because of physical disabilities require a modified curriculum or other special services.

10. Other Health Impaired

    These are the children with a chronic disease or temporary illness who require special services or modifications in their educational programs.

PROJECTION OF EDUCATIONAL NEED

For the Planning Unit give Total Number of regularly enrolled students. K-12 or 1-12 ________					Expected Additional Number of Handicapped to be Served Each Year						
	A	B	C	D	1973-74 E	1974-75 F	1975-76 G	1976-77 H	1977-78 I	1978-79 J	1979-80 K
Projected incidence and area of handicap	Projected Number By Category	Number Currently Identified & Receiving Services	Number Identified and Not Receiving Services	Difference Between Projected Incidence & Actual Number Identified & Being Served							
Trainable Mentally Retarded .25%											
Educable Mentally Retarded 2.00%											
Specific Learning Disabilities 5.00%											
Emotionally Disturbed 3.00%											
Speech Impaired 5.00%											
Hard of Hearing 2.00%											
Deaf .10%											
Partially Sighted .06%											
Blind .02%											
Crippled .50%											
Other Health Impaired .50%											

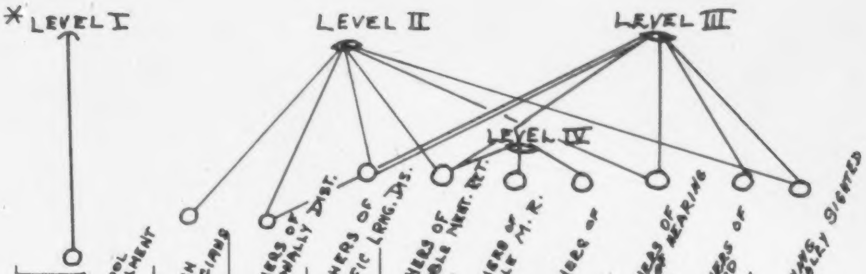
PROJECTION FOR ESTIMATING NEEDED SPECIAL EDUCATION PERSONNEL

	Number of Children **Predicted**	Number of Children Identified	Suggested **Teacher** Pupil Ratio	Program 1973-74	Program 1974-75	Program 1975-76	Program 1976-77	Program 1977-78	Program 1978-79	Program 1979-80
Trainable Mentally Retarded* .25%			1/10							
Educable Mentally Retarded* 2.00%			1/15							
Specific Learning Disabilities*5.00%			1/60							
Emotionally Disturbed* 3.00%			1/10							
Speech Impaired 5.00%			1/60							
Hard of Hearing* 2.00%			1/20							
Deaf .10%			1/10							
Partially Sighted* .06%			1/15							
Blind .02%			1/10							
Crippled* .50%			1/10							
Other Health Impaired .50%										

*Special schools or other provisions being made for.

PERSONNEL NEEDS AND DEPLOYMENT

5



		SCHOOL ENROLLMENT	SPEECH CLINICIANS	TEACHERS OF EMOTIONALLY DIST.	TEACHERS OF SPECIFIC LRNG. DIS.	TEACHERS OF EDUCABLE MENT. RET.	TEACHERS OF TRAINABLE M.R.	TEACHERS OF DEAF	TEACHERS OF HARD OF HEARING	TEACHERS OF BLIND	TEACHING PARTIALLY SIGHTED
PART TIME DIR. OF SPEC. EDUC.	SUPERVISION + DIAGNOSIS	1500	1	1	4	3					
		3000	2	2	7	4					
		5000	3	2	12	7	2				
		7000	4	3	15	10	2				
ONE FULL TIME DIR. OF SPEC. EDUC.		9000	5	3	20	12	2		1		1
		11000	6	4	25	14	2		1		1
		13000	7	4	30	17	3		1		1
		15000	8	5	35	20	3	2	2	2	2

* This schematic chart gives an estimate of the numbers of qualified personnel needed in a program of special education. Some flexibility should be assumed in the later stages of development of the program. Because personnel will function in different ways to serve children's needs, the levels at the top of the page reflect these staffing alternatives. The qualifications of personnel will determine how they will function, level, etc.

PART IV - IDENTIFICATION OF HANDICAPPED CHILDREN

Planning Goal

Systematically identify all handicapped students in the district.

Planning Guidelines

To identify all handicapped children, three procedures should be followed.

1. Teachers systematically refer children suspected of having handicaps to school personnel. (See page 14 for suggestions for the area.)
2. Use a screening procedure which will help determine potentially handicapped children. (See page 15 for suggestions for this area.)
3. Gather individual diagnosis from special education personnel or community agencies. (See page 16 for a statement on psychological testing.)

   (See page 17 for a suggested system of referral and diagnosis.)

Identification should be a part of program and not an isolated preliminary activity.

Planning Objectives

REFERRAL
Each school district will use a written referral form to refer students to appropriate personnel for diagnosis.

- ·Attach copy of referral form
- ·Diagram routing of referral from teachers and agencies to the special education administrator
- ·Indicate date referral form is to be initiated in your district

SCREENING
Each school district will have a screening procedure which will assess possible handicapping conditions.

Will the screening be accomplished by specific grade levels yearly or throughout the school periodically. How will standardized test scores and other information be used in your screening of potentially handicapped students? How will screening of vision, hearing and speech be accomplished in your district? What types of professionals will be used in each of these areas?

INDIVIDUAL DIAGNOSIS
Each school district will be responsible for individual diagnosis of children referred or identified through screening.

Name agencies, public/private, and special education personnel to be used for individual diagnosis. What types of evaluation will each agency or individual be responsible for?

REFERRAL PROCEDURES

The Referral Form should:

- Request a statement of the major problem of student.
- Social, - Academic, - Behavioral
- Request examples, circumstances, frequency and duration of the problem.
- Teachers, parents, agencies, and medical personnel may also refer children for educational diagnosis on this form.
- Develop a referral form specifically for your situation which will meet your needs.

SAMPLE REFERRAL FORM

Name of Student *Joe Smith* Age *10* Grade *4*

Referred by *Mrs. Mabel Johnson*

School *Hennepin*

Date of Referral *April 8, 1970*

1. State the reason for referral: (academic, behavior, physical, etc.)

   Joe has trouble with all academic subjects, is easily distracted in the classroom, seems to be a bright child in other than academic work.

2. Give examples of the problem - you should include the circumstance, frequency, and duration of the problem.

   Academic performance is inconsistent from day to day. Knows addition and subtraction one day; unable to do problems correctly the next day. Reverses b and d, m and w, in reading and spelling; easily distracted by noise in the class. Doesn't speak up in class. Cannot read third grade material well. Seldom finishes his work.

3. State what you believe are pertinent contributing factors outside the school, (home, peer group, ability level, etc.).

   Parents are interested and concerned and ask what they can do at home. They help children with homework. May demand too much time for homework but are cooperative and understanding.

4. Attach data such as copies of reports, tests, and work samples. Indicate how you have attempted to make school work appropriate and indicate degree of success.

Complete screening of potentially handicapped students may be accomplished by yearly screening of one elementary grade (either grades 2 or 3) or by conducting periodic screening of grades 1-8. The latter could be done every two to three years.

SCREENING PROCEDURE

Informal Screening

Complete checking of cumulative records for test information which may show development problems should be done by school districts on a regular basis.

Formal Screening

Some types of screening tests (speech, vision, hearing) using specific instruments should be used and arranged on a regular basis with county health nurses, speech therapists, and other special personnel.

The hiring of special education personnel to begin programs which will set up a continuing screening is a preferred sequence of starting services.

PSYCHOLOGICAL TESTING

Schools are encouraged to reserve psychological tests for only those children for whom it will be most appropriate - suggesting that school districts and county boards of special education employ educational evaluators who will screen children and identify those who will need to be referred for psychological testing. Current and past practice has tended to reverse this process with many children being referred for psychological tests before their education records and other data have been gathered and assessed.

A psychological test is an important part of the evaluation of a child who is being considered for placement in a special education classroom, resource room, and some other special education services. However, it is only one part of the data which should be available to a placement committee for special education.

The Department of Public Instruction, Special Education, recognizes the following persons as qualified under appropriate conditions to administer basic testing of children.

Psychologist: Any person who holds himself out to the public by any title or description of services representing himself as a psychologist for compensation shall meet the requirements in Section 43-32 NDCC. Under this section psychologists are those with a doctoral degree in psychology. They may work independently without supervision in testing.

A person with a master's degree in psychology can provide testing if supervised by a licensed psychologist.

We assume that no psychologist will give tests with which he is not skilled.

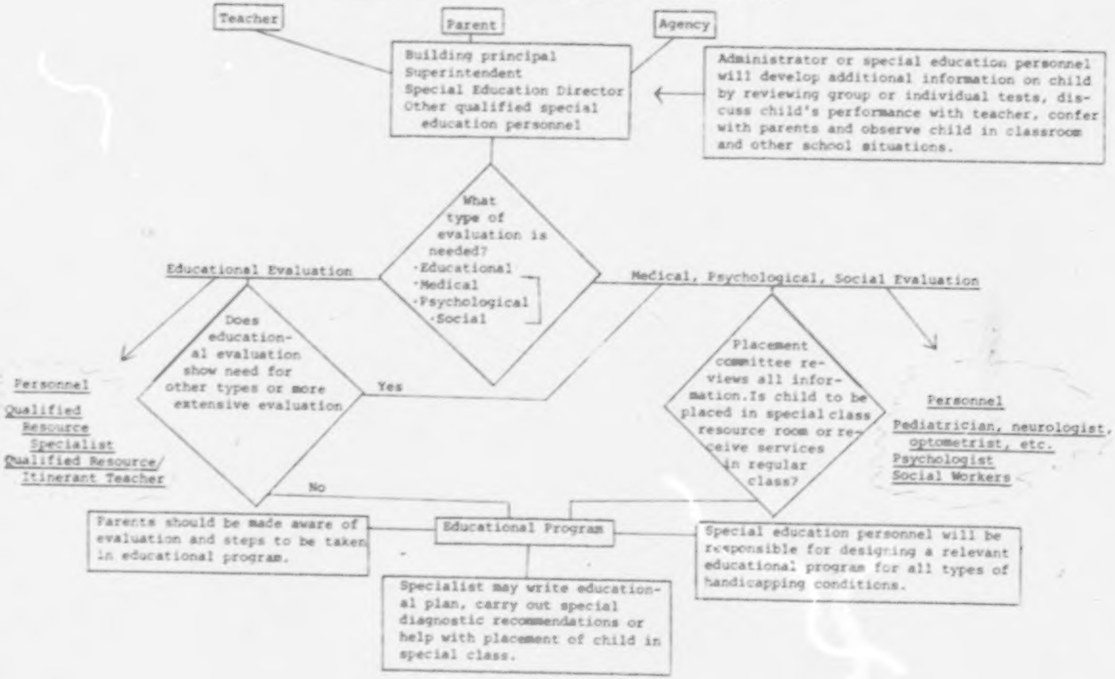
Educational Evaluator: A person with a master's degree in special education (learning disabilities or teaching the emotionally disturbed) who has specific coursework and supervised practicum in WISC, BINET, ITPA and educational tests can test children in a special education program if supervised by the director of special education. Information from these evaluations will be used by the placement committee in arriving at decisions relative to special education placement.

Education evaluators will have expertise in use of educational tests to aid in prescribing instructional strategies for children with specific learning disabilities.

Visiting Counselor to Socially and Emotionally Maladjusted Children: When the assignment of the visiting counselor includes testing of children for placement in special education, he shall have had a master's degree in psychology and have had coursework and supervised practicum in the tests he will use. Information he obtains will be used by a placement committee and his work is under the direction of the director of special education.

The educational evaluator and the visiting counselor will make referral to the psychologist for psychological testing if it is to be used directly for placement of the child in a separate program.

SUGGESTED SYSTEM FOR REFERRAL AND INDIVIDUAL DIAGNOSIS


Teacher
Parent
Agency
Building principal
Superintendent
Special Education Director
Other qualified special education personnel
What type of evaluation is needed?
·Educational
·Medical
·Psychological
·Social
Educational Evaluation
Medical, Psychological, Social Evaluation
Yes
No
Personnel
Qualified Resource Specialist
Qualified Resource/ Itinerant Teacher
Personnel
Pediatrician, neurologist, optometrist, etc.
Psychologist
Social Workers
Educational Program

Administrator or special education personnel will develop additional information on child by reviewing group or individual tests, discuss child's performance with teacher, confer with parents and observe child in classroom and other school situations.

Does educational evaluation show need for other types or more extensive evaluation

Placement committee reviews all information. Is child to be placed in special class resource room or receive services in regular class?

Parents should be made aware of evaluation and steps to be taken in educational program.

Specialist may write educational plan, carry out special diagnostic recommendations or help with placement of child in special class.

Special education personnel will be responsible for designing a relevant educational program for all types of handicapping conditions.

PART V - PLACEMENT OF IDENTIFIED HANDICAPPED CHILDREN

Planning Goal	Planning Guidelines	Planning Objectives
Establish procedures and responsibilities for placement of identified handicapped children in special education programs.	Any child considered for special education services must be determined as handicapped through adequate diagnostic procedures. Placement will depend on type of condition and the severity associated with the handicap. 1. A student who is to remain in a regular classroom most of the time may be assigned to receive part of his education in a resource room or from an itinerant special education teacher (speech clinician, learning disabilities consultant, etc.) only after a parent conference. 2. All children to be enrolled in resource rooms more than half the time or special education classes must be approved by a placement committee for entry or removal from program.	State the responsibilities of the placement committee. Establish criteria for placement of any child in a resource room or a special class. Refer to page 19. Criteria should include social, emotional, educational, psychological considerations. State, by position, those who will be included on the placement committee. State how parents of child being considered will be involved in the committee procedures. How often will students be re-evaluated by the placement committee? Describe provisions made for parental hearing when the placement is questioned by parents. See page 20.

PLACEMENT COMMITTEE

Members of Committee

1. Referring classroom teacher
2. Person responsible for evaluation (special educator or other professional)
3. Principal or superintendent
4. Receiving teacher (regular or special education teacher)
5. *Director of special education

*Director would be key individual on placement committee if available in your single or cooperating district.

Responsibilities

Appropriate committee members and other professionals are to bring all educational, medical, sociological, and psychological information to the committee for consideration.

Consideration by Committee

1. Areas of educational problems - degree of severity compared to other students. Does it affect all areas of learning? How long (years, months) has student had problem? Is the problem evident in most school situations (learning, social, playground, etc.)?
2. Are the areas of difficulty going to exist throughout the school years and beyond?
3. How does the above assessment affect the broad educational goals for the student (vocational, academic, remediation, etc.)?
4. When all factors have been given consideration, make decisions which will place the student in the best possible special education setting to meet his long term educational needs. Except in the case of trainable mentally retarded children and low functioning educable mentally retarded children, always consider placement in situations which will keep the student most involved in the normal school program.
5. The committee will be responsible for involving the parents and giving them all information on the evaluation and committee decisions. If parents, after receiving information on child and the program, do not want child placed in a special class, these wishes should be respected and other alternatives explored for helping the child.
6. Reevaluate all students placed in special class or resource room at least every two years.

PARENTAL HEARING AND REVIEW

1. Right of Review

A child, or his parent or guardian, may obtain review of an action or omission by the school district pertaining to the placement of a child in a special education service or program. If the parent or guardian is not satisfied with the decision of the placement committee he may request a hearing before a special hearing board.

2. Special Hearing Boards

The special hearing board will be composed of three impartial persons from the field of education living outside the district and selected by the county superintendent of schools in the county in which the school district of which the child is a resident is located. Of the three neutral persons selected, two should be qualified professional personnel from any area of special education. This special hearing board will review the data and hear personal testimony from the parent, teacher, school administrators, or others having pertinent reports and records that have been used in making the original decision.

3. Data and Testimony

All data in reports, records, or other materials having a bearing on the decision are to be reviewed by the special hearing board and will be discussed with the parent. Should parents wish to have additional information added to the record prior to the hearing, test results from any qualified independent sources may be added for consideration.

The special hearing board will meet for one day and the expenses of the one day hearing will be paid from the special education budget of the school district in which the child resides.

4. Hearing Request and Decision

When any parent requests a hearing by a special hearing board this shall be arranged upon a written request from the parent within no less than 15 days and no more than 30 days from the date on which the request is made in writing. No change in the program assignment or status of the handicapped child involved shall be made within the period afforded the parent or guardian except that such change may be made with the written consent of the parent or guardian. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made sooner, but without prejudice to any rights that the child and his parent or guardian may have pursuant to this provision.

5. Determination by Special Hearing Board

The determination of the special hearing board shall be binding on all parties. A report of the proceeding and the decision shall be filed in the office of county superintendent with the special education board transactions. The decision made by the special hearing board will be sent in writing to all persons concerned. If the determination is not complied with or implemented, the aggrieved party may resort to any legal remedies available at law.

PART VI - RECORDS OF HANDICAPPED CHILDREN

Planning Goal

Develop and maintain complete and accurate records on all identified handicapped children.

Note: This becomes law for each school district July 1, 1973.

Planning Guidelines

Included in cumulative folders would be the following information plus any other information, reports, ancedotal records, etc.

a. Evaluation information.

b. Present location of student and type of services being given.

Records will be kept in each school district for children in any of the following locations.

a. Children in other districts in/out of state.

b. Children in institutions in/out of state.

c. Children in private schools in/out of state.

It is assumed that there is a school record for each handicapped child currently enrolled in your program.

Planning Objectives

Indicate location of records (school office, or classroom).

List information to be kept on records of identified handicapped children.

State arrangements with agencies such as social services, mental health and retardation centers, public health nurses, vocational rehabilitation, for release of information to your files.

PART VII - COOPERATING AGENCY SERVICES

Planning Goal

Plan to use all resources to provide handicapped children with full opportunities.

Planning Guidelines

Explore and coordinate resources for handicapped children.

Arrange a meeting of representatives of regional and county social service, public health nurses, mental health and retardation centers and vocational rehabilitation services.

Discuss cooperative arrangements for referral of children to the schools and referral of children to agencies. Identify needs handicapped children have other than special education.

Agencies can and will perform a valuable support function in terms of handicapped children but they cannot become involved directly in special education programs or classroom operations as this is the responsibility of the school district.

Planning Objectives

Describe steps to be taken which will establish common areas of concern.

List agencies involved in cooperative planning and name the director of each.

List services provided by each agency. (See page 24 for listing of local, county and regional agencies.)

List the service priorities of each community agency.

List cooperative efforts to be used in the evaluation of handicapped children.

Set guidelines for agencies and schools in making student referral.

List support services which will be provided to schools such as social workers, finance of work study programs, foster homes, etc.

Clarify how release of information on individual children will be authorized to aid educational planning for handicapped children.

AGENCIES AND GROUPS - LOCAL, COUNTY, REGIONAL

Local:

- Private medical services
- Private schools
- Other private services
    - Associations for parents of handicapped children
    - Volunteer agencies
    - Youth groups
    - Church social action groups
    - Juvenile probation officers
    - Day care centers

County:

- Public Health Nurse
- County Social Services Board

Regional:

- Area Social Services Center
- Mental Health & Retardation Center
- Juvenile Commissioner

PART VIII - FINANCING SPECIAL EDUCATION

Planning Goal

Plan financial resources and responsibilities for full implementation of services by 1980.

Planning Guidelines

The cost of special education will include personnel, materials, equipment, and travel of personnel and pupils.

See page 26 for examples of anticipated program costs and comparative state/local percentage of excess cost. This is based on state reimbursement for the 1973-75 biennium.

The financing of special education programs can be the same as organizational patterns - single district, cooperating districts, single or multi-county. Sources of funds are school district funds, county special education levies, state reimbursements.

All requests for state reimbursement will come from the county or school district whichever is appropriate. When county programs are in operation the county will be the vehicle for collecting special education funds and contracting with districts for specific services or contract directly with personnel to provide itinerant services which are used cooperatively by each district.

Planning Objectives

An annual budget will be requested by the Department of Public Instruction - Special Education.

Complete page 27 to give a projection of financial plans for the special education portion of the general school district budget.

FINANCIAL PROJECTIONS BASED ON SPECIAL EDUCATION UNIT OF 1500 STUDENTS

Handicapping condition % and number of students	Expected number of teachers or other cooperative arrangements.	Projected costs for teachers	Projected costs for materials	Projected costs for travel	Total Projected Program Costs	
					From current state special education reimbursement (%)	From local general funds or special education levies (%)
Trainable Mentally Retarded .25% - (4)	Arrange with other districts	Excess program costs	-0-	-0-	Excess costs will be computed by receiving school district. Individual school districts will be responsible for tuition based on excess costs.	
Educable Mentally Retarded 2.00% - (30)	2 - Elementary will need arrangement with other district for high school students	$15,000.	$400.	-0-	2 teachers @$3000. $6,000. - 39%	$9,400 - 61% less state foundation payments
Specific Learning Disabilities 5.00% - (75)	3 itinerant and resource	$27,000.	$400.	$400.	3 teacher @$3500 $10,500 - 38%	$17,300 - 62% less state foundation payments
Emotionally Disturbed 3.00% - (45)	2 teachers	$18,000.	$250.	$600.	2 teachers @$3500. $7,000 - 37%	$11,850 - 63% less state foundation payments
Speech Impaired 5.00% - (75)	1 therapist	$ 9,000.	$200.	$500.	1 therapist @$3500 $3500 - 36%	$6,200 - 64% less state foundation payments
Hard of Hearing 2.00% - (30)	1 itinerant and resource	$ 9,000.	$400.	$600.	1 teacher @$3500. $3500 - 35%	$6,500 - 65% less state foundation payments
Deaf - 10% - (2)	Arrange with other districts or institutions	Excess Program costs	-0-	-0-	Excess costs will be computed by receiving school district or institutions. 9 @$850. ($7600.)	
Crippled - .50% - (7)						
Partially Sighted .06% - (9)	½ itinerant and resource	$ 4,500.	$400.	$600.	½ teacher @$1750. $1750. - 32%	$3750 - 68% less state foundation payments
Blind .02% - (3)	Arrange with other districts or institutions	Excess program costs	-0-	-0-	Excess costs will be computed by receiving school district or institution. ($2500.)	

FINANCE PROJECTION

		1973-1974		1974-1975		1975-1976		1976-1977		1977-1978		1978-1979	
	TOTAL PROGRAM COSTS	*		*		*		*		*		*	
SOURCE OF FUNDS	Amount From State Special Education Funds												
	Amount From County Special Education Funds												
	Amount From School District Funds												
	Amount From Other Sources (list below)												

*Using page 11 (*) project the total budget for each year, estimating salaries, travel and other cost for each projected special education staff person. Use this page as a basis of the total expenditure each year, including projected sources of funds.

Estimate, on the basis of present rates of funding the amounts which will be available from each revenue source. If a county levy is anticipated but not yet a reality, consider that as a source of funding in the year you estimate it will become available.

PART IX - EVALUATING SPECIAL EDUCATION

Planning Goal	Planning Guidelines	Planning Objectives
Evaluate the effectiveness of special education administration and program.	Administration: The special education plan submitted by your districts will serve as the basis for administrative evaluation. This will reflect progress made toward projected goals. Program: Each yearly plan will require program and student objectives and information on personnel, materials and facilities. A report will be required at the completion of each school year to assess progress on the goals and objectives for the yearly period. Product: Each yearly report will give information on handicapped students relative to post-school success.	Name administrators responsible for yearly program and evaluation (special education director or local administrator). List ways you will assess program effectiveness. List components of the program you find difficult to evaluate.

APPENDIX

QUALIFICATIONS FOR TEACHERS OF EDUCABLE MENTALLY HANDICAPPED CHILDREN

The teacher of educable mentally handicapped children is required to have the following credential if completing the coursework after September 1, 1973.*

Basic Credential

A. A valid first grade professional North Dakota Teaching Certificate.

B. Twenty-eight quarter hours in special education courses plus supervised student teaching. At least one course from each of the following groups must be included:

Group 1 - Mental Hygiene, Psychology of Adjustment, Personality Theory, Abnormal Psychology (four quarter hours)

Group 2 - Methods of Teaching Educable Mentally Handicapped Children (eight quarter hours)

Group 3 - Psychology of Exceptional Children or Education of Exceptional Children (four quarter hours)

Group 4 - Student teaching with Educable Mentally Handicapped Children (eight quarter hours)

A letter of recommendation from the instructor is required.

Group 5 - Education of Children with Specific Learning Disabilities; Assessment of Learning Problems (four quarter hours)

Group 6 - Guidance for the Handicapped, Manual Skills and Analysis of Job Areas, Occupational Education for Mentally Retarded Children (four to six quarter hours)

Group 7 - Elective Courses: Music, The Audiovisual Program
Arts and Crafts in the Public Schools or for Retarded Children
Remedial Reading
Introduction to Speech Correction
(four to six quarter hours)

*(Any teacher who has met the requirements for the Basic or Advanced Credential prior to September 1, 1973 will continue to be eligible for the revised Basic Credential until September 1, 1978. The credentials are valid for three years and are renewed automatically unless they are marked temporary or unless requirements are increased.)

QUALIFICATIONS FOR TEACHERS OF TRAINABLE MENTALLY HANDICAPPED CHILDREN

Basic Credential

1. A valid N. Dak. teaching certificate with training in elementary education.
2. Personal qualifications important to teaching the mentally retarded.
3. Fifteen quarter hours in special education for teachers of mentally retarded children chosen from the following courses (at least one course from each group must be included):

Group 1 - Mental Hygiene or Psychology of Adjustment or Personality Theory

Group 2 - Methods of Teaching Trainable Mentally Handicapped Children, or a Seminar in Methods of Teaching Retarded Children with special emphasis on the Trainable Child

Group 3 - Psychology of Exceptional Children or Education of Exceptional Children

Group 4 - Student Teaching in a classroom of mentally retarded children

Group 5 - Arts and Crafts in the Public School or for Retarded Children
Mental Retardation
Introduction to Speech Correction
Principles and Practices in Guidance

Since this is a Basic Credential all of these requirements should be met before assignment to a special class is valid. Work should begin immediately on the Advanced Credential. Basic Credential will not be valid after September 1, 1978.

Advanced Credential

As soon as teachers achieve further proficiency in the field of teaching mentally handicapped children through advanced undergraduate or graduate study may apply for the Advanced Credential.

A valid first grade progessional N. Dak. teaching certificate and the requirements for the Basic Credential in education of mentally handicapped children must be met. At least 15 additional quarter hours in the following areas must be completed (at least one course from each group must be included):

QUALIFICATIONS FOR TEACHERS OF TRAINABLE MENTALLY HANDICAPPED CHILDREN (Cont.)

Group 1 - Abnormal Psychology, Education of Children with Specific Learning Disabilities, Assessment of Learning Problems (four to six quarter hours)

Group 2 - Advanced Methods of Teaching Retarded Children (four to six quarter hours)

Group 3 - Guidance for the Handicapped, Manual Skills and Analysis of Job Areas, Occupational Education for Mentally Retarded Children (four to six quarter hours)

Group 4 - Additional Elective Courses: Music, Speech Correction, The Audiovisual Program, Additional courses from Group 5 under Basic Credential (three to six quarter hours)

It is understood that the person applying for the Advanced Credential shall have completed the requirements for the Basic Credential and shall have completed the requirements for the Bachelor's Degree and hold a valid first grade professional N. Dak. teaching certificate. By September 1, 1978 all teachers in this specialty will be required to have the Advanced Credential.

QUALIFICATIONS FOR SPEECH CLINICIANS

The qualified speech clinician must have a N. Dak. teaching certificate and a minimum of thirty semester hours of special training as outlined by the superintendent of public instruction. A major in Speech Pathology will entitle a clinician to teach in his field of specialty at all grade levels. The following minimum qualifications have been set up as the standard for approval of speech clinicians.

1. A valid first grade professional N. Dak. teaching certificate.

2. A background of courses which will indicate adequate preparation in the subject matter and techniques of the speech correction field.

    a. A total of six semester hours credit distributed among Phonetics, Anatomy, Physiology of the Speech Mechanisms and Physics of Voice, Ear, etc.

    b. A total of twelve semester hours credit in Professional Speech Correction and Speech Pathology courses.

    c. At least three semester credits in Audiology.

    d. At least two hundred clock hours of supervised clinical practicum. (These hours of training will represent actual work with the major types of speech difficulties at varying age levels and shall be in addition to observation periods, assistance with class routine, or other nonteaching activities.)

    e. At least nine semester hours of electives in allied fields which must include courses in Child Psychology and Mental Hygiene.

    f. The speech correctionist should have personal speech habits in both voice and diction which meet an acceptable standard.

3. Adherence to the professional Code of Ethics of the American Speech and Hearing Association.

QUALIFICATIONS FOR TEACHERS OF CHILDREN WITH SPECIFIC LEARNING DISABILITIES

Areas of preparation of teachers and supervisors in specific learning disabilities include coursework in the following: (Not all of these are course titles. Because of wide divergence in course titles at this time applicants should have their transcripts and course content evaluated by the Department of Public Instruction staff. The coursework in Specific Learning Disabilities should ideally be taken after a major and experience in elementary education.)

1. Exceptional Children (3 semester hours) U/G

2. Characteristics of Specific Learning Disabilities (2 semester hours) G

3. Assessment Procedures (2 semester hours) G
   This should not be primarily the administration of tests but rather contain considerable experience in the use of information from tests as they relate to curriculum, adjustment and behavior changes.

4. Methods and Materials in Specific Learning Disabilities (2 semester hours) G
   Intent of materials, modifying and adapting materials, problem solving methods, interventions including behavior modification and other applied learning theory.

5. Child Development (3 semester hours) U/G

6. Seminar in Student Behavior (3 semester hours) G
   Study of student reaction to frustration, response to failure, emotional problems and ways of managing problems in the classroom.

7. Corrective Reading Procedures (2 semester hours) U/G

8. Practicum (3 semester hours) G
   (It is assumed that limited practicum experiences are included in many of the above courses. This final practicum in programming for children with Specific Learning Disabilities should be provided after other qualifications are met.)

9. Disadvantaged Children (3 semester hours) U/G

10. Education of Emotionally Disturbed Children (3 semester hours) G

11. Teacher Consultation Skills (3 semester hours) G
    Includes simulation exercises, practicum, micro-lab techniques.

Above 1-8 are required areas for teachers of children with specific learning disabilities, 9, 10, and 11 are elective courses. Most of the courses should be taken at graduate level.

QUALIFICATIONS FOR TEACHERS OF EMOTIONALLY DISTURBED CHILDREN

Because the learning problems of emotionally disturbed children are so often modified through similar teaching techniques employed by teachers of children with specific learning disabilities, the same coursework areas and practicum will be required as those for teachers of children with specific learning disabilities. In addition, the following areas should be completed at graduate level.

1. Education of Emotionally Disturbed Children (3 semester hours)
2. Classroom Management in Teaching Emotionally Disturbed Children (3 semester hours)
3. Additional Practicum in Education of Emotionally Disturbed Children.

QUALIFICATIONS FOR VISITING COUNSELOR TO SOCIALLY AND EMOTIONALLY MALADJUSTED CHILDREN

Basic Courses

1. A valid first grade professional N. Dak. teaching certificate.

2. Twenty-six semester hours of basic coursework:

Administration of Special Education	3 semester hours
Child Psychology or Developmental Psychology	3 semester hours
Psychology of Adolescence	3 semester hours
Abnormal Psychology	3 semester hours
Mental Hygiene	2 semester hours
Guidance (basic)	3 semester hours
Introduction to Psychology	3 semester hours
Introduction to Sociology	3 semester hours
Tests and Measurements	3 semester hours
Theories of Personality	3 semester hours

Advanced Courses

Advanced work at the graduate level leading to a Master's Degree is required in either psychology or social work, as follows:

Option 1 - Psychology

Individual Differences or Appraisal	3 semester hours
Introduction to Clinical Psychology	3 semester hours
Individual Testing (Binet, WISC, Bender - with supervised practicum of twenty-five tests in each)	6 semester hours
The Family and Family Relations (Sociology course preferred)	3 semester hours
Counseling Techniques (with supervised practicum)	6 semester hours
The Exceptional Child	3 semester hours

Coursework in Statistics, preferably Economics-Elementary Statistics; Psychology-Introduction to Statistics; or Sociology-Introduction to Research Methods is an option also and is required of those who have completed a Master's Degree.

Option 2 - Social Work

The Family and Family Relations (Sociology course preferred)	3 semester hours
Child Welfare	3 semester hours
Social Welfare Legislation and Issues (including community organization)	6 semester hours
Social Casework Practicum (including two hundred clock hours of supervised field placement in a school or agency concerned primarily with children)	9 semester hours
The Exceptional Child	3 semester hours

QUALIFICATIONS FOR VISITING COUNSELOR TO SOCIALLY AND EMOTIONALLY MALADJUSTED CHILDREN (Cont.)

Coursework in Statistics, preferably Economics-Elementary Statistics; Psychology-Introduction to Statistics; or Sociology-Introduction to Research Methods is an option also and is required of those who have completed a Master's Degree.

In addition to the didactic coursework outlined above, it is suggested the visiting counselor's training should include one year under supervision as an intern, preferably in one or more of the following areas:

1. Public school system
2. Social or child welfare agency
3. Mental health agency or neuropsychiatric institute working primarily with children

Any person graduating from a recognized curriculum for training school social workers or school psychologists and fulfilling the other requirements shall be considered eligible for a visiting counselor credential.

QUALIFICATIONS FOR TEACHERS OF VISUALLY IMPAIRED CHILDREN

Partially Sighted Children

The teacher of partially seeing children in the regular class may need suggestions and guidance at the outset, but would not be required to have specific training in this area. A course, Education of Partially Sighted Children, is recommended.

If a teacher spends one-half of the normal teaching day or equivalent or more teaching more than one partially seeing child, she should have at least one course in Education of Partially Sighted Children.

Blind Children

A teacher of children who are so severely visually handicapped that they will need to learn to read and write braille will need to meet the following requirements:

1. A valid N. Dak. teaching certificate.
2. At least twenty-one quarter credits in special courses chosen from the following groups:

   Group 1 - Education of the Visually Handicapped - Elementary, Secondary and Mobility

   Group 2 - Braille Reading, Writing, Literary, Mathematics and Music

   Group 3 - Structure and Function of the Eye

   Group 4 - Experience in Special Education with Visually Handicapped Students

   Group 5 - Education of Partially Sighted Children could be included. Some skills learned are: Reading Braille, Writing Braille, Slate and Stylus, Typing and Handwriting, Mobility, Map Reading.

QUALIFICATIONS FOR TEACHERS OF HEARING IMPAIRED CHILDREN

1. A valid first grade professional N. Dak. teaching certificate.
2. Courses in educational methods of teaching hearing impaired children as follows:
   - a. Teaching Speech to the Deaf (four to six semester hours)
   - b. Teaching Language to the Deaf (four to six semester hours)
   - c. Methods of Teaching Elementary Subjects to the Deaf (four to six semester hours
   - d. Methods of Teaching Speech Reading to the Deaf and Hard of Hearing (two to three semester hours)
   - e. History, Guidance and Education of the Deaf (two to three semester hours)
   - f. Auditory and Speech Mechanisms (two to three semester hours)
   - g. Hearing Tests and Auditory Training, (two to three semester hours)
   - h. Observation and Student Teaching (six to ten semester hours)
   - i. Child Growth and Development (two to three semester hours)
   - j. Psychology or Education of Exceptional Children (two to three semester hours)

QUALIFICATIONS FOR TEACHERS OF PHYSICALLY HANDICAPPED CHILDREN

1. A valid N. Dak. teaching certificate.
2. Two years of successful teaching experience in regular classes.
3. Sound physical and mental health, sympathetic understanding, strong teaching skill.
4. Additional training as the school board or state superintendent of public instruction may require.

QUALIFICATIONS FOR DIRECTORS OF SPECIAL EDUCATION

1. A valid first grade professional N. Dak. teaching certificate.
2. A Master's Degree.
3. Basic preparation in one area of special education which would entitle the applicant to the special education credential for North Dakota in that area.
4. An additional nine semester hours in more than one other area of special education.
5. Eight semester hours in School Administration or a four semester hour internship in Administration of Special Education and two semester hours in School Administration or successful experience in Administation as determined by the Department of Public Instruction.

   The eight semester hours in School Administration should be chosen from courses in School Law, Administration of the Public School, School Finance, Teacher Personnel Administration or a seminar in Administration.
6. At least two years of successful experience in one area of special education.
7. Recommendation from supervisors of work experience.

SCHOOL SOCIAL WORKER

A person having successfully completed a recognized graduate program for school social workers will be considered for the Visiting Counselor Credential or the School Social Worker Credential.

The following five areas are given as suggested functioning areas for the school social worker. The local schools and agency must determine individual qualifications for carrying out this assignment.

Credentials and General Responsibilities

1. Evaluate family and home environment; interviews, visitations, and possible testing.
2. Prepare formal evaluation of child and family and interpret this information to special education staff.
3. Assume responsibility for establishing relationship between school, home and other agencies for additional evaluation.
4. Assume role of resource person to classrooms in providing plans for teacher usage in educational setting.
5. Provide information to parents on special education program and interpret individual needs of handicapped child.

QUALIFICATIONS FOR AUDIOLOGIST

An audiologist in North Dakota public schools must meet the requirements established by the American Speech and Hearing Association in one of the following ways:

1. Clinical certification in hearing.
2. Basic certification in hearing or provisional certification in hearing and be eligible for clinical certification upon completion of the experience requirements.
3. The Master's Degree in audiology and be currently completing the one-year experience requirement prior to taking the qualifying examination.

SPECIAL EDUCATION LEGISLATION AND ITS MEANING FOR SPECIAL EDUCATION PLANNING

The Forty-Third Legislative Assembly passed the most far-reaching special education legislation since the first Act in 1951. HOUSE BILL 1090, when it becomes law July 1, 1973, will have implications for every school district. Other measures passed also have special education implications for some districts.

Below, each portion of the present law and the newly enacted sections are reviewed. School boards and county special education boards should review this information so that they may plan effectively.

HOUSE BILL 1090 - Adds to, changes, modifies and reenacts portions of Chapter 15-59, North Dakota Century Code.

15-59-01. DEFINITIONS.) As used in this chapter:

1. "Exceptional child" means a natural person to the age of twenty-one, who, because of mental, physical, emotional, or learning characteristics, requires special education services. This may include a handicapped child or a gifted child.
2. "Special education" means classroom, home, hospital, institutional, or other instruction to meet the needs of handicapped children, transportation, and corrective and supporting services required to assist exceptional children in taking advantage of, or responding to, educational programs and opportunities.
3. "Handicapped child" means a child who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, specific learning disabled, crippled, or otherwise health impaired who by reason thereof requires special education and related services.
4. "Gifted child" means a gifted and talented child identified by professional, qualified persons, who, by virtue of outstanding abilities, is capable of high performance and who requires diffentiated educational programs and services beyond those normally provided by the regular school program in order to realize his contribution to self and society.

Comment: These definitions were changed to include more appropriate information and terminology. It is the intent of the definitions to include all children for whom educational programs need to be modified because of conditions of exceptionality. This does not imply any change in groups of children served from current special education practice within the state.

15-59-02. ADVISORY COUNCIL ON SPECIAL EDUCATION.) The state board of public school education shall constitute the advisory council on special education.

Comment: No change. The state board of public school education has indicated renewed interest and concern for its role as an advisory council to special education.

15-59-03. DIRECTOR OF SPECIAL EDUCATION.) A qualified director of special education and such assistance as may be necessary shall be employed by the superintendent of public instruction with the advice and approval of the advisory council.

Comment: No change. At present the state special education staff includes:

Janet M. Smaltz, Director
Ida Schmitt, Assistant Director
Rodger Miller, Assistant Director
Ed Maurin, Title VI-C Coordinator
Peter Gefroh, Title VI-B Coordinator

Miss Smaltz and Mr. Miller are available for consultation and aid in long range planning with school districts and county special education boards.

Miss Schmitt is a special education program consultant to school districts planning special education curriculum and in-service training of teachers.

Mr. Maurin is developing a Regional Resource Center for delivery of special education services in four counties in southwestern North Dakota.

Mr. Gefroh coordinates federal funding for handicapped children, oversees the special projects for handicapped children under Title VI-B and acts as liaison with USOE programs.

15-59-04. SCHOOL DISTRICTS TO PROVIDE SPECIAL EDUCATION.) School districts shall provide special education to handicapped children in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the state advisory council and the director of special education and with the institutions of the state. Each school district shall submit a plan with the superintendent of public instruction for implementing special education in the district by July 1, 1975. Special education services shall be fully implemented by July 1, 1980. School districts may provide special education to gifted children in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the state advisory council and the director of special education.

Comment: This is the section with the major change - the mandate for special education. It requires that school districts provide special education services for children. The law goes on to give a time line:

a. for a plan submitted to the department of public instruction by July 1, 1975

b. for full implementation by July 1, 1980.

Total programming cannot be done overnight; however, those districts with identified handicapped children should begin programming immediately.

a. Through effort of single district

b. Cooperatively with one or more other districts

c. County-wide through county special education boards

d. Regionally with several counties and county boards involved.

School districts may program for gifted children but only programming for handicapped children is included in the mandate.

15-59-04.1. RECORDS.) Every school district shall make and keep a current record of all school age handicapped children who are residents of the school district.

Comment: This is new. It makes it mandatory that each district keep a record in the school of each handicapped child in the district whether or not he is enrolled in the school district or is attending an institution, private school or other facility in or out of the state.

15-59-05. POWERS AND DUTIES OF ADVISORY COUNCIL AND DIRECTOR OF SPECIAL EDUCATION.) The advisory council, acting through the office of the superintendent of public instruction, shall establish general state policy within the provisions of this chapter and shall endeavor to ensure a cooperative special education program coordinating all available services. It shall cooperate with private agencies, soliciting their advice and cooperation in the establishment of policy and in the coordination and development of special education programs. With the approval of the advisory council and in accordance with the provisions of this chapter and the policy of the council, the director of special education shall prescribe rules and regulations for the special education of exceptional children and for the administration of this chapter and he shall assist the school districts of the state in the inauguration, administration and development of special education programs, establish standards and provide for the approval of certification of schools, teachers, facilities, and equipment.

Comment: No change.

15-59-05.1. ELIGIBILITY FOR STATE AND FEDERAL AID.) The superintendent of public instruction may apply for, administer, receive, and expend any federal aid for which this state may be eligible, under the office of the superintendent of public instruction, in the administration of this chapter within the limits of legislative appropriation. School districts, county special education boards and multi-county special education boards shall be eligible to serve as the local education agency for application, within the limits of legislative appropriation.

Comment: This is new. It simply clarifies that the superintendent of public instruction may take advantage of federal funds accessible to him for special education under the usual procedures approved by legislative act.

It also designates school districts, county special education boards and multi-county special education boards to serve as local education agencies for application, receipt, administration and expenditure of state and federal funds.

15-59-06. STATE COOPERATION IN SPECIAL EDUCATION.) Exceptional children who are enrolled in approved programs of special education shall be deemed to be regularly enrolled in the school and school districts providing such program and shall be included in determination of elementary and high school per-pupil payments from the county equalization fund whether or not such pupils are regularly attending school in the school or school district receiving such payments. Upon the determination by the director of special education that the school district has made expenditures for each exceptional child in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, and that the parents of a child receiving special education under such program, or the legally responsible person, have made adequate efforts to provide needed education or that adequate reasons otherwise exist for the provision of special education to such child, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district in an amount not exceeding one and one-half times the state average per-pupil cost of education computed by the department of public instruction for the previous school year for such child per year for instruction and two times the state average per-pupil cost of education computed by the department of public instruction for the previous year for such child per year for transportation equipment, and residential care.

Comment: No change here. This section provides the limits for per capita expenditure for special education:

a. One and one-half times the state average per-pupil cost can be used for instruction per pupil.

b. Two times the state average per-pupil cost can be used per pupil for transportation, equipment and residential care.

15-59-06.1. ENFORCEMENT OF SPECIAL EDUCATION PROGRAMS IN INSTITUTIONS BY SUPERINTENDENT OF PUBLIC INSTRUCTION.) The superintendent of public instruction shall enforce educational standards for all special education programs in institutions wholly or partly supported by the state which are not supervised by public school authorities. Such standards shall be similar to regulations and standards established for the conduct of special education classes of the public schools in the state.

Comment: This is new. Standards similar to those for public school special education shall be enforced in state institutions providing special education for handicapped children.

15-59-07. CONTRACTS FOR HANDICAPPED CHILDREN TO ATTEND PRIVATE SCHOOLS.) If any school district in this state has any educable elementary or high school student who in the opinion of a qualified psychologist, a medical doctor, and the district superintendent is unable to attend the public schools in the district because of a physical or mental handicap or because of a learning disability, such school district shall contract with any accredited private nonsectarian nonprofit corporation within or without the state which has proper facilities for the education of such student, if there are no public schools in the state with the necessary facilities which will accept such student. No school district shall enter into a contract with any private nonsectarian nonprofit corporation for the education of any student having a physical handicap or learning disability, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract shall provide that such school district agrees to pay to the private nonsectarian nonprofit corporation as part of the cost of educating such student an amount for the school year equal to three times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department, provided that such payment shall not exceed the actual per-pupil cost incurred by such private, nonsectarian nonprofit corporation. The district of the student's residence shall be reimbursed from funds appropriated by the legislative assembly for the foundation aid program, in an amount equal to sixty percent of the payment made to such private, nonsectarian nonprofit corporation. If the attendance of such student at such school is for less than a school year, then the contract shall provide for such lesser amount prorated on a monthly basis. The reimbursement herein provided to the contracting district from the foundation aid program shall be in lieu of any other foundation aid to which the district might otherwise be entitled.

As used in this section, the term "learning disability" shall mean a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written languages, and which may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. The term "learning disability" shall include, but not be limited to, such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, but shall not include learning problems due primarily to visual, hearing or motor handicaps, mental retardation, emotional disturbance, or environmental disadvantage.

Comment: This is the same except that mentally handicapped children are included as are physically handicapped and children with specific learning disabilities. This is the section governing a public school contracting for educational services with a private school when no public school facilities are available. Condition of the law now are:

1. *Contract to be drawn on forms provided by the superintendent of public instruction after a decision is made by the team:*

   a. qualified psychologist
   b. medical doctor
   c. district superintendent

2. *Private school must be accredited nonprofit, nonsectarian corporation, within or without the state.*

3. *School district shall contract with a private school if there are no public schools in the state with the necessary facilities which will accept such student.*

4. *Curriculum in private school must have been approved in advance by the superintendent of public instruction.*

5. *Private school must be accredited.*

6. *School district agrees to pay three times the state average per-pupil elementary or secondary cost (whichever applies) or cost if less than the above.*

7. *The school district will be reimbursed from the foundation aid program in an amount equal to 60% of the payment made.*

15-59.1-01. COUNTY BOARD OF SPECIAL EDUCATION.) The county superintendent of schools shall appoint a county board of special education which shall consist of from three to five members from within the county, and each member thus appointed shall be subject to approval by the board of county commissioners. Terms of office shall be for two years and shall be arranged as follows:

1. If three members are appointed, no more than two terms shall expire in any one year.

2. If four members are appointed, no more than two terms shall expire in any one year.

3. If five members are appointed, no more than three terms shall expire in any one year.

At the time of the initial appointment, the decision as to which terms are to expire at the end of the first year shall be determined by lot by the county superintendent of schools. Vacancies shall be filled in the same manner as original appointment. The county superintendent of schools shall serve as secretary and executive officer of the board. Expenses of members of the board shall be paid in the same manner as expenses of other county officials are paid. The board of county commissioners may in its discretion provide for additional per diem compensation.

Comment: No change.

15-59.1-02. OPERATIONS PLAN - FINANCING.) The county board of special education shall annually prepare a program for special education in the county and a budget necessary to implement such program. The program and budget shall be submitted to the board of county commissioners at the same time and in the same manner as other statements on budgetary matters are filed. If such program and budget are approved by the board of county commissioners, the county commissioners may budget funds from the county general fund and, in addition, upon approval by a majority of the voters voting on the proposal at an election called by the county commissioners, may levy a tax not to exceed three mills upon all taxable property in the county for the purpose of carrying out such program. Such mill levy shall be over and above any mill levy limitation provided by law and shall be collected and paid in the same manner as are other county property taxes. The county treasurer shall credit the proceeds of the tax levy, together with any other funds received from the state or other sources for special education purposes, to a special education fund. Such funds shall be expended, within the limitations of the budget approved by the board of county commissioners, as directed by the county board of special education upon vouchers approved by the county superintendent of schools and in the same manner as other county funds are expended, except that such specific expenditures need not be approved by the board of county commissioners.

Comment: *A small change clarifies that county commissioners may allow county general funds to be used to cover program budget of the county special education board if they wish,in addition to the three mill levy for special education.*

Comment: *The changes made in the following sections were for clarification only and do not alter their meaning.*

15-59.1-03. ELECTION TO REMOVE MILL LEVY.) Upon the filing with the board of county commissioners at least thirty days in advance of any regular county election of a petition signed by five percent of the electors of the county as determined by the number of votes cast for the office of governor at the preceding general election, the question of whether to continue the mill levy of not to exceed three mills for financing the special education program shall be submitted to the voters at the next regular county election. If the levy for special education is disapproved by a majority of the votes cast at this election, the board of county commissioners shall immediately discontinue such levy but levies previously spread upon the tax rolls shall not be invalidated. A subsequent vote upon the question of authorizing a mill levy of not to exceed three mills may be had at any regular county election upon the filing with the board of county commissioners of a petition containing the signatures of five percent of the electors of the county as determined by the number of votes cast for the office of governor at the preceding general election not less than thirty days prior to such election.

15-59.1-04. POWERS OF COUNTY BOARD-APPROVAL OF PROGRAM BY STATE.) A county board of special education organized under the provisions of this chapter, may contract with any school district within or outside the county to provide special educational services for educable children. Upon approval of the special education program and budget by the board of county commissioners, such plan and budget shall be submitted to the department of public instruction for approval.

15-59.1-05. PAYMENTS FROM STATE.) If the budget and program submitted by the county board of special education are approved by the department of public instruction, any payments for special education under the provisions of section 15-59-06 shall be made to the county board of special education and disbursed by such board in furtherance of the county program. If such budget and program are not approved, any such payments shall be made to the school districts in the county providing special education facilities. Nothing contained in this section shall alter the method of making per-pupil payments out of the county equalization fund or from the state equalization fund to the county equalization fund.

15-59.1-06. MULTIPLE COUNTY BOARDS.) When it is deemed desirable by the boards of county commissioners of two or more counties, such counties may join together in the formation of a multiple county board of special education. Such board shall consist of at least one member from each county special education board appointed by the respective county superintendents of schools and approved by the respective boards of county commissioners. Vacancies shall be filled in the same manner as provided in original appointment. Such multiple county board shall designate one of the county treasurers to act as treasurer for special education funds and one of the county superintendents of schools to act as secretary and executive officer of the board. The remaining county superintendents of schools shall perform such other duties in connection with the special education program as the joint board of special education shall designate.

15-59.1-07. PROGRAM AND FINANCING OF MULTIPLE COUNTY BOARDS.) The multiple county board shall prepare a program and budget and submit it to the joint board of county commissioners for approval in the same manner and at the same time as provided in the case of individual county programs. The amount budgeted and approved shall be prorated among the counties according to the assessed valuation of each county or upon such basis as the respective boards of county commissioners shall agree. The amount prorated to each county shall be included in the respective county budgets in the same manner and shall be subject to the same procedures, limitations, and conditions as those specified for individual county special education budgets and tax levies. Provisions applicable to individual county programs in regard to approval by the department of public instruction and payments from the state and the state or county equalization funds shall also apply to multiple county programs.

15-59.1-08. ELECTION TO REMOVE MILL LEVY.) Upon the filing with the board of county commissioners at least thirty days in advance of any regular county election, of a petition signed by five percent of the electors of the county as determined by the number of votes cast for the office of governor at the preceding general election, the question of whether to continue the mill levy of not to exceed three mills to finance the individual county's prorated share of the costs of the multiple county special education program shall be submitted to the voters of the individual county at the next regular county election. If the levy for special education is disapproved by a majority of the votes cast at this election, the board of county commissioners shall immediately discontinue such levy, but levies previously spread upon the tax rolls shall not be invalidated. A subsequent vote upon the question of authorizing a mill levy of not to exceed three mills may be had at any regular county election upon the filing with the board of county commissioner at least thirty days in advance of any regular county election, of a petition containing the signatures of five percent of the electors of the county as determined by the number of votes cast for the office of governor at the preceding general election.

15-59.1-09. WITHDRAWAL OF COUNTIES.) A county may withdraw from a multiple county program upon resolution of the board of county commissioners. Such withdrawal shall be effective not less than one year from the date that notice of the resolution is given to the remaining board or boards of county commissioners. The giving of such notice shall not relieve the withdrawing county of its obligation for tha portion of the costs of the program prorated to it for the period prior to the effective date of such withdrawal.

15-59.1-10. PRESENT PLAN CONTINUED.) School districts in counties which have not adopted county or multiple county programs shall continue participation in programs of special education as authorized by other provisions of law until such time as a county or multiple county boards of special education is appointed and a program and budget are submitted to and approved by the board of county commissioners and the department of public instruction.

HOUSE BILL NO. 1126

AN ACT to amend and reenact sections 15-40.2-01, 15-40.2-09, and 15-40.2-10 of the North Dakota Century Code, relating to payment of tuition to an accredited institution of another state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 15-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-01. TRANSFER OF PUPILS TO OTHER DISTRICTS OR INSTITUTIONS - TUITION AGREEMENTS.) The school board of any district may send elementary or high school pupils into another school district or to an accredited institution of another state when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of such pupils to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.

SECTION 2. AMENDMENT.) Section 15-40.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-09. ATTENDANCE IN PUBLIC SCHOOLS OR INSTITUTIONS OF BORDERING STATES, WHEN PERMITTED - CONTINUATION OF ATTENDANCE WHEN DISTRICT ANNEXED OR REORGANIZED.) Students may attend a school in a bordering state under the following circumstances:

1. A student who lives within forty miles of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state, and the school board of the school district within which such student resides may contract with the bordering state for the education of such student.

2. A student who resides within a school district which is annexed to or reorganized with another district or districts, and which has been sending students to a school district in a bordering state because of proximity or terrain, shall be permitted to attend or continue attending school in the district in the bordering state.

If a request for attendance is denied under subsection 1 or subsection 2 of this section by the school board of the district in which the student resides, an appeal may be made to the three-member committee referred to in section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision shall be final. In the event that the district does not comply with a decision requiring that tuition charges be paid, county equalization fund payments and state payments shall be withheld as provided in section 15-40.2-05.

Payments shall be made by the county of the pupil's residence to the school district or institution in the bordering state for attendance under the provisions of this section in an amount equal to the per-pupil payments as provided in sections 15-40.1-07 or 15-40.1-08, as the case may be, and the remainder of the pupil's tuition as determined under section 15-40.2-11 shall be paid by the district of the pupil's residence. Pupils attending public schools or institutions in bordering states in accordance with this section shall be certified by the district or institution in the bordering state to the county superintendent of the county of the pupil's residence, and payments shall be made from the county to the school district or institution in the bordering state.

This section shall not be construed to require the district of residence to provide pupil transportation, or payments in lieu thereof, for pupils for whom the payment of tuition has been approved.

SECTION 3. AMENDMENT.) Section 15-40.2-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-10. RECIPROCAL MASTER AGREEMENTS FOR PUPIL ATTENDANCE IN OTHER STATES.) The superintendent of public instruction may enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school pupils in the public schools or institutions in such bordering states. Such reciprocal agreements may provide for payment on a per-pupil basis from the county equalization fund for pupils from this state attending schools in bordering states in a sum equal to payments received by the district of the pupil's residence from the county equalization fund. The superintendent of public instruction, by certificate to the department of accounts and purchases, shall authorize payments from the appropriation for state payments to the county equalization fund for the attendance of pupils in bordering states, and the department of accounts and purchases, within the limits of legislative appropriations, shall make such payments. The balance of the tuition payment by the pupil's district of residence shall not exceed the amount established by reciprocal agreement less the amount paid from the county equalization fund to the school district or institution in the bordering state.

Comment: *This will apply only to districts in counties contingent to the state line or within 40 miles of the state line. It allows school districts to pay tuition for the child's attendance in a public school or institution.*

HOUSE BILL NO. 1350

AN ACT to provide for a special education levy in school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. SCHOOL DISTRICT SPECIAL EDUCATION PROGRAM - FINANCING - LEVY - LIMITATIONS OF LEVY.) The school board of any school district may budget funds from the school district general fund for a special education program for the school district. If the school district is located in a county which is not levying a county tax for special education, the school board may, upon approval by a majority of the voters voting on the proposal at an election called by the school board, levy a tax not to exceed a total of three mills upon all taxable property in the school district for the purpose of carrying out a special education program for the school district, separately or, whenever possible, in cooperation with other school districts. If the school district is located in a county which is levying less than three mills for special education, or if the school district consists of territory in more than one county and one or more of the counties of which the district is a part, levy a tax for special education, the tax provided in this section shall be levied on all of the property in the district to the extent possible, provided that the levy on any property which is now subjected to a county levy for special education shall be reduced, if necessary, to ensure that none of the property located within the school district is subjected to a combined county and school district special education levy in excess of three mills. The school board of a school district, all or a part of which is located in a county levying a tax for special education, shall cooperate with the county or counties having special education programs to provide a program of special education for the children with special education needs in the school district. The levy provided in this section shall be over and above any mill levy limitations provided by law and shall be collected and paid in the same manner as are other school district property taxes. The county treasurer shall credit the proceeds of the tax levy, together with any other funds received from the state or other sources for school district special education purposes, to a school district special education fund. Such funds shall be expended, within the limitations of the budget approved by the school board, for the school district special education program.

SECTION 2. ELECTION TO DISCONTINUE MILL LEVY.) Upon the filing with the school board at least thirty days in advance of any regular school district election of a petition signed by ten percent of the electors of the school district as determined by the county superintendent for such county in which such school is located, the question of whether to continue the mill levy of not to exceed three mills for financing the special education program shall be submitted to the voters at the next regular school district election. If the levy for special education is disapproved by a majority of the votes cast at this election, the school board shall immediately discontinue such levy, but levies previously spread upon the tax rolls shall not be invalidated. A subsequent vote upon the question of authorizing a mill levy of not to exceed three mills may be had at any regular school district election upon the filing with the school board of a petition containing the signatures of ten percent of the electors of the school district as determined by the county superintendent for such county in which such school is located.

Comment: This was enacted primarily to give school districts where county levies have repeatedly failed opportunity to participate together with other districts or other county special education boards in a special education program.

Single districts should explore carefully the merit of moving into special education cooperatively county-wide before employing this new section of the law.

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NOTE

ABROAD IN THE LAND: LEGAL STRATEGIES TO EFFECTUATE THE RIGHTS OF THE PHYSICALLY DISABLED

By **Ann Gailis** and **Keith M. Susman**

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ABROAD IN THE LAND: LEGAL STRATEGIES TO EFFECTUATE THE RIGHTS OF THE PHYSICALLY DISABLED

> *"Movement, we are told, is a law of animal life. As to man, in any event, nothing could be more essential to personality, social existence, economic opportunity—in short, to individual well-being and integration into the life of the community—than the physical capacity, the public approval, and the legal right to to be abroad in the land."* [1]

The past decade has witnessed a growing public awareness of the rights of many disadvantaged and previously ignored groups in society. Essentially unnoticed, however, are the problems of the physically disabled.[2] Discrimination against the handicapped exists in many forms. For instance, entire school systems flagrantly violate state law by excluding handicapped children;[3] planners design public buildings which are inaccessible to the physically disabled;[4] and employers, fearful of higher insurance costs, refuse to hire them.[5] While the ensuing economic costs are serious, the human costs, in terms of the suffering and wasted lives, are even more distressing.

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[1] Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 Calif. L. Rev. 841 (1966) (Professor tenBroek himself was blind).

[2] The total number of physically handicapped individuals in the United States is not readily ascertainable. One authority recently placed the number at 11.7 million. *See Hearings on H.R. 8395 Before the Subcomm. on the Handicapped of the Senate Comm. on Labor and Public Welfare*, 92d Cong., 2d Sess. 265 (1972) [hereinafter cited as *Handicapped Hearings–Senate*]. The difficulty in obtaining accurate and meaningful statistics is attributable to the inability of statisticians to measure the effect of a defined handicap on the capacity of the handicapped to function normally in society. For example, the epileptic may not be handicapped in his capacity to use public transportation; however, he is severely limited in his ability to secure and maintain employment. *See* M. Gandy, Notes on Employment Problems and Epilepsy Patients, Jan. 4, 1971 (available from Epilepsy Foundation of America). Similarly, an individual with a spinal cord injury may be able to obtain employment but incapable of utilizing public transportation in order to seek and maintain employment. *See Handicapped Hearings–Senate* 1006. Numerical statistics must be evaluated in terms of the resultant effect of a specific disability on participation in normal activity. *See generally* U.S. Social Security Admin., Dep't of Health, Educ., & Welfare, Social Security Survey of the Disabled: 1966 (Rpt. No. 10, 1970); U.S. Dep't of Health, Educ., & Welfare, Chronic Conditions and Limitations of Activity and Mobility (National Health Survey Series 10, No. 61, 1971); U.S. Health Services & Mental Health Admin., Dep't of Health, Educ., & Welfare, Use of Special Aids, (National Health Survey Series 10, No. 78, Public Health Service Pub. No. (HSM) 73-1504).

[3] *See* 118 Cong. Rec. 1258 (1972) (remarks of Representative Vanik).

[4] *See* Washington Post, Dec. 8, 1972, § D, at 3, col. 1.

[5] *See* M. Gandy, *supra* note 2, at 8.

While a number of laws have been enacted which affect the handicapped[6] it is only recently that the handicapped themselves vocally have asserted their right to equal treatment.[7] Proposed amendments to Title VI[8] and Title VII[9] of the Civil Rights Act of 1964 would have prohibited discrimination against the handicapped in federal programs and in private employment. Although there was strong support for these bills among the handicapped, no action was taken. A similar provision to prohibit discrimination in federal programs was included in the Rehabilitation Act of 1972[10] which was passed by Congress but subsequently vetoed by the President.[11]

In view of this limited legislative action, the handicapped may be forced to resort to the courts in order to vindicate their rights. To do so, they must develop new legal strategies by using existing theories in previously unexplored ways. This Note will consider the development of such strategies in the areas of education, physical access and employment.

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[6] Most of these laws do not secure the civil rights of the handicapped, but rather provide services and assistance. 29 U.S.C. §§ 31-42b (1970) (vocational rehabilitation for persons injured in industry); Developmental Disabilities Services and Facilities Construction Amendments of 1970, 42 U.S.C. §§ 2661-66, 2670-77c (1970). *See generally* U.S. Dep't of Health, Educ. & Welfare, Summary of Selected Legislation Relating to the Handicapped (1971). However, three recently enacted federal laws protect some aspects of a handicapped person's civil rights. *See* 42 U.S.C. §§ 4151-56 (1970) (prohibits architectural barriers in newly constructed and renovated federal buildings); Act of Oct. 21, 1972, Pub. L. No. 92-515, 86 Stat. 970 (protects civil rights of the blind and the otherwise physically disabled in the District of Columbia; requires equal access to public places, public accommodations and conveyances; prohibits discrimination in employment; and guarantees equal access to housing); Education Amendments of 1972, Pub. L. No. 92-318, § 904, 86 Stat. 235 (prohibits discrimination against the blind in federally funded educational programs).

Several states have gone further than the federal government in securing the rights of the disabled. The Illinois constitution guarantees the physically and mentally handicapped the fullest possible participation in the social and economic life of the state. Ill. Const. art. I, § 19. Other states have anti-discrimination laws protecting handicapped persons seeking employment in private industry. *See* Iowa Code Ann. § 601A.7 (Supp. 1972); Wis. Stat. § 111.31 (1969). In addition, many state constitutions provide for education as a basic right. *See* F. Weintraub, A. Abeson and D. Braddock, State Laws on Education of Handicapped Children; Issues and Recommendations 11 (1971). *But see id.* at 11-12, 17 (some state constitutions permit omission from mandatory attendance laws of children with certain handicaps); notes 14-16 *infra* and accompanying text. A number of state statutes provide that publicly funded buildings must be accessible to handicapped persons, and some statutes include publicly used-privately owned buildings as well. *See* Committee on Barrier Free Design, The President's Committee on Employment of the Handicapped, A Survey of State Legislation to Remove Architectural Barriers. *See also* note 59 *infra*.

[7] Thoben, *Disabled People March for Civil Rights*, U.S. Dep't. of Health, Educ. & Welfare, Rehabilitation Record, Sep. & Oct., 1972, at 24.

[8] H.R. 12,154, 92d Cong., 1st Sess. (1971).

[9] H.R. 10,962, 92d Cong., 1st Sess. (1972).

[10] H.R. 8395, 92d Cong., 2d Sess. (1972).

[11] Weekly Compilation of Presidential Documents, Oct. 30, 1972. The same provision was contained in a revised version of the Act passed by the 93d Congress. S. 7, 93d Cong., 1st Sess. (1973). It again was vetoed by the President. Weekly Compilation of Presidential Documents, Apr. 2, 1973. An attempt to override this veto failed.

EDUCATION

Sixty percent of the estimated seven million handicapped children in the United States are denied the special educational assistance they need for full equality of opportunity.[12] One million are excluded entirely from public school systems.[13] The bases for this discrimination lie in constitutional provisions,[14] statutes[15] and court decisions[16] of the various states. Two recent district court opinions, however, recognized the right of the handicapped to participate equally in public education. A consent decree issued in *Pennsylvania Association For Retarded Children v. Pennsylvania*[17] required the state to provide free access to public education and training for all mentally retarded children.[18] The court in *Mills v. Board of Education*[19] stated that the education right extended to the physically handicapped as well as to the mentally retarded.[20] The *Mills* court held that the denial of a publicly supported education for the handicapped in the District of Columbia, where public education was available to all others, violated the due process clause of the fifth amendment.[21] The same rationale may be applicable to the states through the equal protection clause of the fourteenth amendment.[22]

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[12] 118 CONG. REC. S7852 (daily ed. May 16, 1972) (remarks of Senator Williams).

[13] *Id.*

[14] *See* DEL. CONST. art. 10, § 1; N.M. CONST. art. 12, § 5. Both the New Mexico and Delaware constitutions permit omission of the mentally and physically handicapped from the state's compulsory school attendance provisions.

[15] *See* ALASKA STAT. § 14.30.010(b)(3) (1962); NEV. REV. STAT. § 392.050 (1971).

[16] The Wisconsin Supreme Court held that a board of education may deprive a physically handicapped child of his right to a public school education. *See* State *ex rel.* Beattee v. Board of Educ., 169 Wis. 231, 234-35, 172 N.W. 153, 155 (1919). However, in 1967 the Wisconsin Attorney General, while reaffirming the right of local school authorities to exclude a student, stated that other means for a free, public education must be provided. *See* F. WEINTRAUB, A. ABESON AND D. BRADDOCK, *supra* note 6, at 12. Thousands of handicapped children still are excluded from Wisconsin public schools. *See* 118 CONG. REC. E561 (1972) (remarks of Representative Vanik).

[17] 334 F. Supp. 1257 (E.D. Pa. 1971).

[18] *Id.* at 1259.

[19] 348 F. Supp. 866 (D.D.C. 1972).

[20] *Id.* at 878.

[21] *Id.* at 875.

[22] The fifth amendment, which contains a due process clause, is applicable to the District of Columbia, while the fourteenth amendment, which contains both a due process clause and equal protection clause, applies only to the states. *See* Bolling v. Sharpe, 347 U.S. 497, 499 (1954). Though both concepts stem from the American ideal

The Supreme Court has applied two tests for judging whether a state's justification defeats an equal protection challenge. Under the more lenient rational basis test, a state's classification is unconstitutional only if based on grounds totally irrelevant to the state's objective.[23] However, when fundamental interests[24] or suspect classifications[25] are involved, the Court scrutinizes discriminatory laws more carefully and requires the state to demonstrate an interest sufficiently compelling to overcome a presumption of invalidity.[26]

Discrimination against the handicapped may be a suspect classification. The courts have found suspect classifications when the particular group involved is saddled with such disabilities, subjected to a history of such purposeful discrimination, or relegated to a position of such political weakness as to require special protection.[27] The stigma of inferiority usually attached to such a classification has been the major determining factor in designating classifications as suspect.[28] Handicapped groups historically have been politically weak and fragmented,[29]

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of fairness, they are not mutually exclusive. While the equal protection clause is a more explicit safeguard against prohibited unfairness than the due process clause, every interest found to be fundamental and protected under due process probably is fundamental under the equal protection clause as well. *See Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1130 (1969). Thus the *Mills* court's rationale based on the due process clause in the District of Columbia is sound precedent for application of the equal protection clause to the states.

[23] *See, e.g.*, Reed v. Reed, 404 U.S. 71, 75-76 (1971); Morey v. Doud, 354 U.S. 457, 463-64 (1957); Lindsey v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911); *see* notes 129-130 *infra* and accompanying text.

[24] Fundamental interests include travel, voting, criminal procedure, marriage and procreation. *See* Shapiro v. Thompson, 394 U.S. 618, 638 (1969) (travel); Reynolds v. Sims, 377 U.S. 533, 561-62 (1964) (voting); Douglas v. California, 372 U.S. 353, 357 (1963) (criminal procedure); Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535, 541 (1942) (marriage and procreation).

[25] Suspect classifications are those classifications based on alienage, race and national ancestry. *See* Graham v. Richardson, 403 U.S. 365, 371 (1971) (alienage); Loving v. Virginia, 388 U.S. 1, 9 (1967) (race); Korematsu v. United States, 323 U.S. 214, 216 (1944) (national ancestry).

[26] *See, e.g.*, Dunn v. Blumstein, 405 U.S. 330, 339 (1972); Harper v. Virginia Bd. of Elections, 383 U.S. 663, 670 (1966); McLaughlin v. Florida, 379 U.S. 184, 191-92 (1964). The presence of a fundamental interest or a suspect classification is sufficient to trigger the compelling state interest test. *See, e.g.*, Graham v. Richardson, 403 U.S. 365, 371-72 (1971); Shapiro v. Thompson, 394 U.S. 618, 638 (1969); Loving v. Virginia, 388 U.S. 1, 11 (1967); Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535, 541 (1942).

[27] *See* San Antonio Independent School Dist. v. Rodriguez, 41 U.S.L.W. 4407, 4415 (U.S. Mar. 21, 1973).

[28] *See, e.g.*, Loving v. Virginia, 388 U.S. 1, 7 (1967) (racial classification); Brown v. Board of Educ., 347 U.S. 483, 494 (1954) (racial classification); Korematsu v. United States, 323 U.S. 214, 239 (1944) (Murphy, J., dissenting) (national ancestry classification). *See generally* Comment, *The Evolution of Equal Protection—Education, Municipal Services and Wealth*, 7 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 103, 132-35 (1972).

[29] *See Handicapped Hearings—Senate* 564-67.

and handicapped persons have been stigmatized by society with a badge of inferiority.[30] The handicapped condition, often congenital and unalterable, has been analogized to racial classifications[31] which almost always compel the strict standard of review.[32] Classification of the handicapped, involving a politically weak group with a congenital or unalterable trait, similarly should undergo the strictest scrutiny by the courts.

The alternative method to invoke the application of the compelling state interest test is to recognize education as a fundamental interest.[33] The Supreme Court, however, in *San Antonio Independent School District v. Rodriguez,*[34] sustained Texas' use of the property tax as the means for financing public education, while holding that education is not a fundamental interest.[35] The Court, nevertheless, left open a door to a constitutional attack on unequal educational opportunity when this inequality consists of an absolute denial of education.[36] Such an absolute denial of education is what confronts many handicapped children.[37] Hence the holding of *Mills v. Board of Education*,[38] that the right to a free, publicly supported education extends to all handicapped children,[39] should not be placed in jeopardy by the *Rodriguez* decision. In situations where there is no absolute denial of education to the handicapped, but merely the allegation that the education provided by the state is inadequate, the *Rodriguez* decision will limit plaintiff's attempts to obtain the strict scrutiny of suspect classification analysis.

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[30] Kriegel, *Uncle Tom and Tiny Tim: Some Reflections on the Cripple as Negro,* 38 AMERICAN SCHOLAR 412 (1969). *But see Developments in the Law, supra* note 22, at 1127 (stigma of inferiority does not attach to certain physical disabilities as it does to recognized suspect classifications).

[31] Kriegel, *supra* note 30, at 416.

[32] The Supreme Court struck down a racial classification involving segregation in the public schools. Brown v. Board of Educ., 347 U.S. 483 (1954). Per curiam decisions issued by the Court subsequent to *Brown* dealing with other public facilities such as parks, bathhouses and golf courses indicate that all racial classifications are viewed with strictest scrutiny. *See, e.g.,* New Orleans City Park Improvement Ass'n v. Detiege, 358 U.S. 54 (1958), *aff'g mem.* 252 F.2d 122 (5th Cir.); Mayor & City Council v. Dawson, 350 U.S. 877 (1955), *aff'g mem.* 220 F.2d 386 (4th Cir.); Muir v. Louisville Park Theatrical Ass'n, 347 U.S. 971 (1954), *vacating mem.* 202 F.2d 275 (6th Cir. 1953). Subsequent decisions have applied the same strict standard. *See, e.g.,* Swann v. Board of Educ., 402 U.S. 1 (1971); Loving v. Virginia, 388 U.S. 1 (1967); McLaughlin v. Florida, 379 U.S. 184 (1964).

[33] *See, e.g.,* Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280, 283 (W.D. Tex. 1971), *rev'd,* 41 U.S.L.W. 4401 (U.S. Mar. 21, 1973); Van Dursatz v. Hatfield, 334 F. Supp. 870, 874-75 (D. Minn. 1971); Serrano v. Priest, 5 Cal. 3d 584, 604-10, 487 P.2d 1241, 1255-59, 96 Cal. Rptr. 601, 615-619 (1971).

[34] 41 U.S.L.W. 4401 (U.S. Mar. 21, 1973).

[35] *Id.* at 4417.

[36]

> Whatever merit appellees' argument might have if a State's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where—as is true in the present case—no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic and minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.

Id. at 4418.

If successful in establishing the handicapped condition as a suspect classification, traditional arguments offered as justifications by the state probably would not pass the compelling interest test. While a state might argue that prohibitive costs compel such classification, the Supreme Court has stated previously that constitutional rights cannot be denied merely because their protection will necessitate the expenditure of public funds.[40] Similarly administrative inconvenience is not a compelling interest justifying the exclusion of the physically disabled.[41] School systems which discriminate against or totally exclude handicapped children then would have to provide the equal educational opportunities to which all children are entitled.[42]

PHYSICAL ACCESS

TRANSPORTATION

The two major barriers to complete utilization of transportation facilities by the physically handicapped are architectural design and legal recognition of the rights of the handicapped. Architectural impediments are particularly acute for individuals confined to wheelchairs who are often unable to enter buses, trains, planes, or transportation terminals.[43] Since these physical obstacles can be eliminated effectively by modern technology and proper planning,[44] the only remaining barrier to sufficient mobility is the lack of legal principles implementing the right to fully use such facilities.[45] Even where that right clearly is established by legislation,[46] some officials have failed to initiate effective action.[47] Thus, the courts again may be called upon to provide relief where legislation is either non-existent or not fully implemented by public officials.

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[37] *See* notes 13-16 *supra* and accompanying text.

[38] 348 F. Supp. 866 (D.D.C. 1972); *see* notes 19-22 *supra* and accompanying text.

[39] 348 F. Supp. at 875.

[40] *See, e.g.*, Graham v. Richardson, 403 U.S. 365, 376 (1971); Boddie v. Connecticut, 401 U.S. 371, 382 (1971); Goldberg v. Kelly, 397 U.S. 254, 265-66 (1970).

[41] *Cf.* Boddie v. Connecticut, 401 U.S. 371, 381 (1971); Goldberg v. Kelly, 397 U.S. 254, 265-66 (1970).

[42] *See* F. WEINTRAUB, A. ABESON AND D. BRADDOCK, *supra* note 6, at 40-46.

[43] *See* Mandella & Schweikert, *Mobility for Physically Impaired Persons*, 25 PARAPLEGIA NEWS, Nov. 1972, at 14.

[44] *Id.* at 15-16. For example, California's Bay Area Rapid Transit System was designed to be totally accessible to disabled persons. *Id.*

[45] Some attempts have been and are being made. The Civil Aeronautics Board has notified air carriers of its intention to exercise rule-making authority with regard to the transportation of physically disabled persons. *See* 36 Fed. Reg. 20,309 (1971). The

The Supreme Court has developed the principle that the right to interstate travel and the right to use the instrumentalities of interstate commerce are fundamental under the Constitution.[48] In *Shapiro v. Thompson*,[49] the Court declared that statutes requiring residence as a prerequisite for the receipt of welfare benefits infringe upon the constitutional right to travel by inhibiting movement from one state to another.[50] The Court reasoned that residency requirements create two

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move is in reaction to present dissatisfaction with a 1962 industry agreement. *See* CAB Agreement No. 16614 (Dec. 31, 1962). *See generally Medical Criteria for Passenger Flying*, ARCHIVES OF ENVIRONMENTAL HEALTH, Feb., 1961. The new rules have not been promulgated.

The Interstate Commerce Commission has not regulated the transportation of handicapped persons via rail or interstate bus. *See Handicapped Hearings–Senate* 515. However, the National Railroad Passenger Corporation (AMTRACK) has provided barrier-free construction in new equipment and facilities and renovation of old equipment and facilities where practical and feasible. National Railroad Passenger Corp. Executive Memorandum No. 72-4 (Mar. 15, 1972).

[46] *See* 42 U.S.C. § 4151 (1970) (requiring that buildings financed with federal funds be designed and constructed to be accessible to the physically handicapped). The statute was amended in 1970 to include the Washington, D.C., subway system, presently under construction. *See* Act of Mar. 5, 1970, Pub. L. No. 91-205, 84 Stat. 49 *amending* 42 U.S.C. § 4151 (1970).

[47] Washington, D.C., subway officials refused to approve installation of elevators in the local system, as mandated by Congress, until ordered by the court to do so. *See* Washington Urban League, Inc. v. Washington Metropolitan Area Transit Authority, Inc., Civil No. 776-72 (D.D.C., June 29, 1973). The suit focused on the need for further appropriating legislation rather than individual rights.

[48] *See* United States v. Guest, 383 U.S. 745, 757 (1966). The right was first articulated by Chief Justice Taney in the *Passenger Cases*, a series of cases concerning the right of the states to impose a tax on aliens. Passenger Cases, 48 U.S. (7 How.) 282, 463 (1849) (Taney, C.J., dissenting). Eighteen years later a majority of the Court adopted Taney's earlier views that the right to travel is an incident of national citizenship. Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 49 (1867).

[49] 394 U.S. 618 (1969).

[50] *Id.* at 629. Pennsylvania, Connecticut and the District of Columbia had statutory provisions denying welfare assistance to individuals who had not resided in the particular jurisdiction for at least one year. *Id.* at 622-27. *See also* Dunn v. Blumstein, 405 U.S. 330 (1972) (durational residency requirement as prerequisite for voting violative of fundamental right to travel calling for application of compelling state interest test).

Whereas both *Guest* and *Shapiro* only involved the right to travel interstate, lower courts have found a fundamental right to travel intrastate. *See* King v. New Rochelle Municipal Housing Authority, 442 F.2d 646, 648 (2d Cir.), *cert. denied*, 404 U.S. 863 (1971); Cole v. Housing Authority, 435 F.2d 807, 809 (1st Cir. 1970); Valenciano v. Bateman, 323 F. Supp. 600, 603 (D. Ariz. 1971). The Supreme Court has never addressed the question of purely intrastate travel. The majority in *Shapiro* did not ascribe the right to travel to any particular constitutional provision but rather to the general constitutional concepts of personal liberty. 394 U.S. at 629. In dissent, Chief Justice classes of potential welfare recipients—those living within the state for the prescribed period and those living within the state for less than the prescribed period.[51] Applying the compelling state interest test, the Court concluded that a classification which infringes the fundamental right to travel violates the equal protection clause of the fourteenth amendment.[52]

Similarly, all travelers might be classified into two groups—the physically handicapped, who have restricted access to the instrumentalities of interstate travel, and the non-handicapped, who have complete access. Since these discriminatory restrictions constitute an infringement on the right to travel, transportation companies should be required to demonstrate that a compelling state interest justifies the exclusion of the handicapped. Of course, some governmental action must be shown as a prerequisite for application of either the due process or the equal protection clauses.[53] Publicly owned transportation companies, and even certain privately owned companies,[54] would satisfy the "state action" requirement.

Warren and Justice Black looked to the commerce clause for the origins of the right. *See id.* at 644, 648 (Warren, C.J., & Black, J., dissenting). Justice Harlan, in dissent, concluded that the right has its source in the due process clause of the fifth amendment. *Id.* at 655, 671 (Harlan, J., dissenting). The Court has also found a close relationship between the freedom to travel and the freedoms of speech and association. *See* Aptheker v. Secretary of State, 378 U.S. 500, 517 (1964). Under the view that the right to travel stems from the commerce clause, it probably would not apply to purely intrastate transportation. But, if the right derives from the freedoms of speech and association, it would be difficult to deny its application to intrastate travel. *See* Note, *Residence Requirements After Shapiro v. Thompson*, 70 Colum. L. Rev. 134, 138 (1970).

[51] 394 U.S. at 627.

[52] *Id.* at 638. The Court further held that the District of Columbia's residence requirements for welfare benefits violated the due process clause of the fifth amendment. *Id.* at 641-42. *See generally* 1 C. Antieau, Modern Constitutional Law § 8.94 (1969). The equal protection clause does not apply to the District of Columbia. *See* note 22 *supra*.

[53] For a court to find that a transportation system is in violation of equal protection, state action must be shown. U.S. Const. amend. XIV, § 1. Governmental action is also necessary for application of fifth amendment due process. *See* Public Utilities Comm'n. v. Pollack, 343 U.S. 451, 461 (1952); Corrigan v. Buckely, 271 U.S. 323, 330 (1926). The operation of a transportation company regulated under the authority of Congress constitutes governmental action. *See* Public Utilities Comm'n. v. Pollack, *supra* at 461-62.

[54] A privately owned municipal transit system can be so enfranchised that it is state action for the company to engage in conduct violative of equal protection. *See* Boman v. Birmingham Transit Co., 280 F.2d 531 (5th Cir. 1960); Williams, *The Twilight of State Action*, 41 Texas L. Rev. 347, 358-59 (1963). The courts have found state action in various other instances. *See, e.g.*, Evans v. Newton, 382 U.S. 296 (1966) (private organization carrying out a public function); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) (private business an integral part of a public building devoted to a public service); Shelley v. Kraemer, 334 U.S. 1 (1948) (judicial enforcement of a private agreement). *But see* Moose Lodge 107 v. Irvis, 407 U.S. 163 (1972) (mere licensing does not constitute state action).

The cost of solving current architectural problems through existing technology should not be a sufficiently compelling interest to justify the denial of a fundamental constitutional right such as travel.[55] Therefore, courts may be asked to require publicly owned and some privately owned transportation systems to spend the funds necessary to make their facilities accessible to the physically handicapped.

PUBLIC BUILDINGS

The handicapped presently are excluded from many public buildings by architectural barriers ranging from monumental staircases to six-inch curbs.[56] Although federal law requires that all new federal and federally assisted facilities designed for public use be readily accessible,[57] there is no provision for existing structures.[58] State statutes addressing the problem of architectural barriers also generally ignore the need for modifications of existing buildings.[59] These buildings house a wide range of federal and state agencies and services to which the public must have access; the efforts of the handicapped individual to secure assistance and present grievances and complaints are impeded by his inability to gain physical access to the buildings. If this interference infringes the handicapped person's constitutional rights, removal of the interference may be forced by court action.

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[55] *See, e.g.*, Graham v. Richardson, 403 U.S. 365, 376 (1971); Boddie v. Connecticut, 401 U.S. 371, 382 (1971); Goldberg v. Kelly, 397 U.S. 254, 255-56 (1970).

[56] *See* Martin, *A Wheelchair View*, Washington Post, Dec. 8, 1972, § D, at 5, col. 1; Martin, *When 'Up' is a Down*, Washington Post, Oct. 29, 1972, § K, at 1, col. 1; Martin, *Handicaps on the Hill*, Washington Post, Oct. 1, 1972, § L, at 1, col. 8.

[57] *See* 42 U.S.C. §§ 4151-56 (1970). Primary responsibility for developing standards is lodged with the Administrator of General Services who must consult with the Secretary of Health, Education, and Welfare. *Id.* § 4152 (1970). Regulations passed pursuant to the legislation have incorporated detailed accessibility standards adopted by the American National Standards Institute. Federal Property Management Regulations, 41 C.F.R. § 101-17.704 (1972); *see* AMERICAN NATIONAL STANDARDS INSTITUTE, AMERICAN STANDARD SPECIFICATIONS FOR MAKING BUILDINGS AND FACILITIES ACCESSIBLE TO AND USABLE BY THE PHYSICALLY HANDICAPPED, USAS A117.1 (1961). The ANSI standards include ramp gradients, water fountain heights, and door and toilet stall widths. *Id.* § 5.

[58] Only existing structures which are altered for federal use or with federal funds are included in the legislation. *See* 42 U.S.C. § 4151 (1970).

[59] *See* COMMITTEE ON BARRIER FREE DESIGN, *supra* note 7. Some of the statutes provide that accessibility is required only if economically feasible and not unreasonably complicated. Others require that the building have one entrance which is accessible while ignoring other barriers. *See id.* Four states have laws covering publicly used, privately owned buildings; fourteen explicitly cover remodeling. *See id.* Like the federal government, most states have no provision for existing structures. One county in Ohio did consent to erect an elevator in the existing county courthouse after suit by a local resident. Consent Decree, Wargowsky v. Novak, Civil No. C-72-138 (N.D. Ohio, March 30, 1973). Another county in Ohio consented to remove barriers from its court houses and the health and welfare building. Friedman v. County of Cuyahoga, Case No. 895961 (Cuyahoga County Ct. 1972).

The Supreme Court long has recognized that citizens have the right to come to their "seats of government"[60] to transact business and petition for redress of grievances.[61] This freedom to petition is protected by the first amendment[62] and applies to all branches of government, including the administrative agencies.[63] The judiciary has been vigilant to prohibit infringement upon the citizen's right to communicate freely with the government. In *Brown v. Louisiana*[64] the Supreme Court upheld the right of the citizen to be physically present in a public building to petition for redress of a grievance related to the operation of that facility.[65] Moreover, in *Edwards v. South Carolina*[66] the Court viewed the defendants' efforts to enter the state house grounds, a public facility, to present their grievances as an exercise of first amendment rights in its most "pristine and classic form."[67] Thus, while public agencies have the right to regulate access to their facilities,[68] they may not do so in an unreasonable and discriminatory manner.[69] Since the physical barriers which impede the handicapped individual's access generally exist because of poor planning choices and serve no useful purpose, they may be attacked as unreasonable and discriminatory. The possibility of alternative means of communication is irrelevant. The defendants in *Brown* and *Edwards* had other means of communication, but the Court nevertheless found the restrictions on defendants' access to be an unjustifiable burden on their first amendment rights.[70]

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[60] The seat of government is where the courts, executive and legislature are located. *Cf.* Edwards v. South Carolina, 372 U.S. 229, 235 n.10 (1963).

[61] *See* Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 44 (1867); Passenger Cases, 48 U.S. (7 How.) 282, 491 (1849) (Taney, C.J., dissenting). Although courts recognize the extreme importance of the right to petition, it has received much less attention than the rights of speech and assembly. This may be due to the fact that it is closely intertwined with the latter rights. *See* United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967) (speech, assembly and petition intimately connected and equally fundamental). *See also* De Jonge v. Oregon, 299 U.S. 353, 364 (1937) (right to petition an integral part of republican form of government).

[62] U.S. CONST. amend. I. The first amendment's prohibition of acts by Congress abridging the right to petition has been extended to the states through the fourteenth amendment. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940); Schneider v. State, 308 U.S. 147, 160 (1939); Gitlow v. New York, 268 U.S. 656 (1925). Section 1983 of title 42 of the *United States Code* prohibits state violations of rights protected by the fourteenth amendment and can serve as a basis for suit against the state. *See* Wilwording v. Swenson, 404 U.S. 249 (1971); Hatfield v. Bailleaux, 290 F.2d 632, 636 (9th Cir. 1961); 42 U.S.C. § 1983 (1970). *See also* Chambers v. Baltimore & O.R.R., 207 U.S. 142, 148 (1907) (right to sue and defend is privilege under article IV of the Constitution; right conservative of all other rights).

[63] *See* California Motor Trans. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972). Although access to the courts is protected by the first amendment, when the state denies a party use of the courts or refuses a remedy, due process may be violated. While a state may regulate the manner in which its courts operate, due process is denied if its conditions are unreasonable. *See* Cohen v. Beneficial Finance, 337 U.S. 541 (1949). *See also* Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (garnishment without opportunity to defend). Such due process requirements extend to administrative actions as well. *See* Bell v. Burson, 402 U.S. 535 (1971) (license revocation by Bureau of Motor Vehicles); Goldberg v. Kelly, 397 U.S. 254 (1970) (no evidentiary hearing prior to termination of welfare benefits).

In a recent case the appellants argued that the imposition of filing fees on indigents in divorce actions violated their first amendment right to petition. *See* Boddie v. Connecticut, 401 U.S. 371 (1971). The Court, however, viewed access to the courts as an element of due process in this instance because the judicial process was the only means available for dissolving the marriage. *Id.* at 375. Why the Court chose due process is not clear since issues such as service of process would not have been necessary to resolve had they relied on the first amendment. *See* La France, *Constitutional Law Reform for the Poor: Boddie v. Connecticut*, 1971 DUKE L.J. 487, 529 (the author was counsel for appellants).

[64] 383 U.S. 131 (1966).

Since the right to petition is protected by the first amendment it may only be infringed when a danger exists to interests which the state lawfully may protect.[71] The state clearly has infringed the rights of the handicapped since, although it did not create their physical condition, by constructing physical barriers it created their exclusion.[72] The state had the alternative when building its facilities to use designs which would have made them fully accessible at similar cost.[73] By an official choice of construction[74] the state has infringed the rights of the handicapped without countervailing state interest. Therefore the state has a duty to eliminate all such impediments to the free exercise by the handicapped of their rights.[75] Some changes, such as ramps and railings, may be effected at minimal financial outlay;[76] others may involve expensive structural changes. The courts, however, will order costly protections when Bill of Rights freedoms are involved.[77] Thus, the handicapped individual may have a remedy against either the state or the federal government for violation of his first amendment rights.

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[65] *Id.* at 142.

[66] 372 U.S. 229 (1963).

[67] *Id.* at 235.

[68] *See* Brown v. Louisiana, 383 U.S. 131, 143 (1966).

[69] *Id.* Discriminatory regulations infringing first amendment rights are prohibited even for restricted areas such as military bases. *See* Flower v. United States, 407 U.S. 197 (1972) (leafletting permitted on "public street" within military base); *cf.* Downing v. Kunzig, 454 F.2d 1230 (6th Cir. 1972) (public normally has access when conducting own business). *But see* Barrett v. Kunzig, 331 F. Supp. 266 (1971), *aff'd*, 41 U.S.L.W. 3128 (6th Cir. Feb. 22, 1972), *cert. denied*, 409 U.S. 914 (1972).

[70] *See* Brown v. Louisiana, 383 U.S. 131 (1966) (statute infringed right to enter library to petition for end to segregated library system); Edwards v. South Carolina, 372 U.S. 229 (1963) (statute infringed right to enter state house grounds to express grievances). *But see* Adderly v. Florida, 385 U.S. 39 (1966) (state's interest in controlling jailyard property was sufficient to uphold convictions of demonstrators); Cox v. Louisiana, 379 U.S. 559 (1965) (activities near court house may be limited in deference to judicial integrity).

[71] *See* NAACP v. Button, 371 U.S. 415, 438 (1963) (only compelling state interest can justify limiting first amendment freedoms).

[72] Even if no first amendment right of access exists, the handicapped individual may be denied equal protection of the laws if the state creates an unreasonable classification between the disabled and the non-disabled without a rational relationship to some state interest. *See* note 23 *supra* and accompanying text.

[73] Cost estimates by the National League of Cities based on seven hypothetical buildings indicate that the additional cost involved in making them barrier free would be less than one-half of one percent. *See* NATIONAL COMMISSION ON ARCHITECTURAL BARRIERS, DESIGN FOR ALL AMERICANS 7 (1967). Studies based on three buildings actually constructed indicated that the cost was increased by only one-tenth of one percent. *See id.*

EMPLOYMENT

PRIVATE EMPLOYMENT

Only a small percentage of the estimated 14 million physically handicapped Americans who could work if given the opportunity actually are employed.[78] The handicapped individual's unemployment

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[74] *See* United States v. Raines, 362 U.S. 17, 25 (1960) (requirement of state action met when source is person or agency formally identifiable).

[75] *Cf.* Brown v. Board of Educ., 349 U.S. 294, 300 (1955) (remedies to constitutional infringement must be enforced). A court might find that the state's duty to provide access could be fulfilled by means other than barrier removal, such as providing agents to assist the handicapped individual in securing services he otherwise might be unable to obtain. While this may be an administratively logical solution, it does not seem to be fully within the meaning of the constitutional imperative that there be no infringement.

[76] NATIONAL COMMISSION ON ARCHITECTURAL BARRIERS, *supra* note 73, at 3.

[77] *See* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (abolished poll tax); Gideon v. Wainwright, 372 U.S. 335 (1963) (right to counsel at trial); Douglas v. California, 372 U.S. 353 (1963) (right to counsel on appeal). *See also* Note, *Discriminations Against the Poor and the Fourteenth Amendment*, 81 HARV. L. REV. 435, 440-41 (1967) (financial interests of the state).

[78] 118 CONG. REC. 1472 (1972) (remarks of Senator Williams). One study showed that 25 percent of the unemployed handicapped respondents had tried but were unable to find jobs. *See* A.D. Little Co., Employment, Transportation and the Handicapped, July 1968, at 30 (U.S. Social and Rehabilitation Serv., Dept. of Health, Education, and Welfare, No. C-69492).

Among the more severely handicapped, however, fully a third of those surveyed were unable to obtain employment. *Id.* at 31. The rate of employment for the entire sample was 50 percent, varying from a high of 75 percent for individuals with back and spine problems to a low of 29 percent for amputees. *Id.* at 29-30.

In addition to private employment, sheltered workshops funded by the state vocational agencies provide training and work for some handicapped individuals. These workshops are partially exempt from the minimum wage requirements of the Fair Labor Standards Act. *See* 29 U.S.C. § 214(d) (1970). Encouraged as a necessary alternative for the disabled, the workshops are criticized for providing inadequate wages and facilities. *See Handicapped Hearings–Senate* 1046-47. *See also* H.R. REP. No. 92-1135, 92d Cong., 2d Sess. 43 (1972). Additional jobs are provided under the Randolph-Sheppard Act of 1936 which grants blind people licenses and initial financial aid for the operation of vending stands. 20 U.S.C. § 107 (1970); *see* H.R. REP. No. 92-1135, 92d Cong., 2d Sess. 49-55 (1972). These jobs may be limited by the increasing naturally impairs his ability to support a family and to participate fully in the daily activities of society. Some, unable to rely on family support or other resources, are forced to accept welfare.[79]

Although transportation and physical barriers play significant roles in restricting employment possibilities,[80] a crucial factor is employer attitude. In addition to stereotyped prejudices,[81] many employers fear that the handicapped person will be unable to perform assigned tasks.[82] This attitude exists despite the results of numerous studies showing that the handicapped worker, when assigned an appropriate position, performs as well as, or better than, his non-handicapped co-workers.[83]

In spite of reassurances by insurance associations, many employers also fear that workmen's compensation rates will increase due to employment of the disabled.[84] However, employment of the handicapped does not affect the premium rates either for non-occupational benefit plans or for workmen's compensation.[85] Furthermore, 46 states have second-injury laws which afford the employer some protection against bearing the full cost of support if a disabled employee is reinjured and permanently disabled.[86] Nevertheless, employer prejudice against the handicapped as an insurance liability remains.

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use of automatic vending machines. *Id.* at 52. Encouragement to enterprises hiring the blind is also provided by the Wagner-O'Day Act which authorizes special purchases by federal agencies of blind-produced supplies. *See* 41 U.S.C. §§ 46-48 (Supp. 1971).

[79] It is estimated that rehabilitation by federally financed state vocational rehabilitation agencies of 51,084 handicapped persons saved over $40.5 million in public assistance payments. H.R. REP. No. 92-1135, 92d Cong., 2d Sess. 12 (1972).

[80] *See Handicapped Hearings–Senate* 515, 534-35; A.D. Little Co., *supra* note 78, at 30; notes 43-45 *supra* and accompanying text.

[81] One study showed that all disabled groups were subject to prejudice and that personnel directors would prefer to hire a former prison inmate or mental hospital patient than an epileptic. *See* Richard, Triandis & Patterson, *Indices of Employer Prejudice Toward Disabled Applicants*, 47 JOURNAL OF APPLIED PSYCHOLOGY 52 (1963). *See also* M. Gandy, *supra* note 2.

[82] *See* U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. No. 234, WORKMEN'S COMPENSATION AND THE PHYSICALLY HANDICAPPED WORKER 5, 20 (1961).

[83] *See id.* at 6-8.

[84] The Association of Casualty and Surety Companies pointed out that rates are based solely on the relative hazards in the company's work and the company's accident experience. *Id.* at 45. Statistics show that a company actually might minimize their accident experience by hiring the disabled since they have eight percent fewer accidents than their co-workers. *See Handicapped Hearings–Senate* 539.

[85] U.S. BUREAU OF LABOR STANDARDS, *supra* note 82, at 10.

[86] *See Handicapped Hearings–Senate* 535. Although many of these laws are limited in the types of injuries covered and the amount of liability, some states are attempting to strengthen the laws. *Id.* at 536. *See also Hearings on H.R. 8395, H.R. 9847 and Related Bills Before the Select Subcomm. on Education of the House Comm. on Education and Labor*, 92d Cong., 2d Sess. 113 (1972) (hereinafter cited as *Handicapped Hearings–House*); U.S. EMPLOYMENT STANDARDS ADMINISTRATION, DEP'T OF LABOR, BULL. No. 212 (1971).

Present governmental efforts promote voluntary action by employers[87] and encourage placement activities[88] but do not aid persons refused employment because of handicaps.[89] Other groups, especially blacks, also face serious discrimination in hiring by private employers. Gradually barriers are being overcome and jobs are being opened to qualified persons without regard to race. Progress has been achieved by litigation based either on recent[90] or on Civil War era[91] legislation. There may be some hope for similar progress through the courts for the handicapped.

The primary federal law prohibiting discrimination by private employers, Title VII of the Civil Rights Act of 1964,[92] clearly does not proscribe discrimination against the handicapped.[93] However, a 1968 Supreme Court decision, *Jones v. Alfred H. Mayer Co.*,[94] involving racial discrimination, may provide a possible avenue of relief. The Court held that Section 1982 of title 42 of the *United States Code*,[95] a relatively obscure statute originally derived from the Civil Rights Act of 1866,[96] applies to private racial discrimination in the sale of housing.[97] In refuting the general belief that state action was required,[98] the Court indicated that a companion statute, Section 1981,[99] is applicable to private discrimination in employment.[100]

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[87] The President's Committee on Employment of the Handicapped works with industry to gain acceptance of the handicapped worker and sponsors a National Employ the Handicapped Week to publicize its efforts. *See Handicapped Hearings–Senate* 540, 1036-37. Each state has a Governor's Council on Employment of the Handicapped which works closely with the President's Committee. In addition there are over 1,000 local committees. *Id.* at 539.

[88] In accordance with a 1971 Presidential directive, the vocational rehabilitation agencies, in conjunction with the United States Employment Service and the Veterans Administration, are placing special emphasis on training and job placement of Vietnam veterans. *See Handicapped Hearings–Senate* 254-56.

[89] Only a few states have laws which prohibit private employment discrimination. *See, e.g.*, Ill. Ann. Stat. ch. 38, § 13-2 (Smith-Hurd 1972); Iowa Code Ann. § 601A.7 (Supp. 1972); Wis. Stat. Ann. § 111.31 (Supp. 1973).

[90] *See* Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e (1970).

[91] *See* Act of May 31, 1870, ch. 114, § 16, 42 U.S.C. § 1981 (1970); note 99 *infra*.

[92] 42 U.S.C. § 2000e (1970).

[93] Title VII makes it an unlawful employment practice to discriminate against any person because of race, color, religion, sex or national origin. *Id.* § 2000e-2(a) (1970). Efforts have been made to expand it to include the handicapped without success. *See* notes 8-10 *supra* and accompanying text. Even if efforts to include the handicapped in Title VII are successful, no Title VII remedy exists against employers of less than 25 workers. 42 U.S.C. § 2000e(b) (1970).

[94] 392 U.S. 409 (1968).

[95] 42 U.S.C. § 1982 (1970).

[96] Act of April 9, 1866, ch. 31, § 1, 14 Stat. 27.

[97] 392 U.S. at 420.

[98] *See id.* at 409, 419-20, 436. Prior to *Jones* it generally had been assumed that section 1982 required state action. *See* Larson, *The Development of Section 1981 As a Remedy for Racial Discrimination*, 7 Harv. Civ. Rights-Civ. Lib. L. Rev. 56, 57 (1972); 35 Brook. L. Rev. 275, 276-77 (1969). *But see* United States v. Morris, 125 F.2d 322 (E.D. Ark.

The *Jones* Court examined the legislators' intent in enacting the 1866 Act and the thirteenth amendment, the latter stating that "[n]either slavery nor involuntary servitude . . . shall exist within the United States . . . ."[101] An enabling clause grants Congress the power to enforce the amendment by appropriate legislation.[102] The *Jones* Court considered the amendment to have both a negative aspect—the abolition of slavery—and an implicit positive corollary—the establishment of universal freedom.[103] While specifically declining to decide whether the amendment itself did any more than establish universal freedom,[104] the Court held that Congress, under the enabling clause, had the power to decide what acts constituted "badges and incidents of slavery" and

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1903) (section one of Civil Rights Act of 1866, predecessor of section 1982, prohibits private acts of discrimination aimed at preventing blacks from buying land).

[99] The statute provides that "All persons . . . shall have the same right . . . to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . . ." 42 U.S.C. § 1981 (1970).

Both sections 1981 and 1982 are derived from section one of the Civil Rights Act of 1866. 392 U.S. at 422 n.28. The current *United States Code* notes that Section 1982 is derived from the 1866 Act but attributes section 1981 only to the 1870 statute which reenacted the 1866 Act after the fourteenth amendment was passed. However, section 1981 retains the scope of the 1866 statute. *See* Note, *Racial Discrimination In Employment Under the Civil Rights Act of 1866*, 36 U. Chi. L. Rev. 615, 619 (1969).

[100] The Court, in a lengthy footnote, specifically overruled an earlier decision which held that section 1981 required state action in employment discrimination. 392 U.S. at 441 n.78, *overruling* Hodges v. United States, 203 U.S. 1 (1906). A lower court was prompt in seizing upon the language in *Jones* to prohibit discrimination by private employers on racial grounds. *See* Dobbins v. Local 212, IBEW, 292 F. Supp. 413 (S.D. Ohio 1968). To date five circuits have agreed. *See* Bradley v. Bristol-Myers, Inc., 459 F.2d 621 (8th Cir. 1972) (racial discrimination in hiring practices); Brown v. Gaston County Dyeing Mach. Co., 457 F.2d 1377 (4th Cir.), *cert. denied*, 409 U.S. 982 (1972) (racial discrimination in promotion policies); Young v. International Telephone & Telegraph Co., 438 F.2d 757 (3d Cir. 1971) (racial discrimination by both employer and union); Sanders v. Dobbs Houses, Inc., 431 F.2d 1097 (5th Cir. 1970), *cert. denied*, 401 U.S. 948 (1971) (refusal to rehire based on race); Waters v. Wisconsin Steel Works, 427 F.2d 476 (7th Cir.), *cert. denied*, 400 U.S. 911 (1970) (racial discrimination in hiring practices).

One court has questioned whether section 1981 is in fact derived from the 1866 Act. *See* Cook v. Advertiser, 323 F. Supp. 1212 (M.D. Ala. 1971), *aff'd on other grounds*, 458 F.2d 1119 (5th Cir. 1972). The discrepancies on which the *Cook* court based its opinion may be due to the mistake of a codifier in compiling and revising the statutes. *See* Note, *Section 1981 and Private Discrimination*, 40 Geo. Wash. L. Rev. 1024, 1036-39 (1972). *See generally* Larson, *supra* note 98, at 56.

[101] U.S. Const. amend. XIII; *see* 392 U.S. at 422-44.

[102] *See* U.S. Const. amend. XIII, § 2.

[103] 392 U.S. at 439; *see* Bailey v. Alabama, 219 U.S. 219, 241 (1911); Hodges v. United States, 203 U.S. 1, 17 (1906); Civil Rights Cases, 109 U.S. 3, 20 (1883).

[104] 392 U.S. at 439.

thus could be prohibited.[105] Although the Court indicated that *Jones* is applicable only to race,[106] some commentators suggest that the rationale of *Jones* applies to other forms of discrimination.[107] Thus, it is possible to construct an argument asserting that the thirteenth amendment and the subsequent Civil Rights Act of 1866 prohibit employment discrimination against the handicapped.

In passing the thirteenth amendment the primary consideration in the minds of the legislators was Negro slavery in the South.[108] However, in drafting the amendment the legislators recognized that it would make fundamental changes in the federal system and would enable Congress to establish laws insuring equality for all citizens.[109] By enacting section one of the 1866 Act, Congress extended to "citizens of every race and color" the same rights to purchase and contract as those enjoyed by "white persons."[110] Section 1981, derived from section one, is even broader—encompassing not only citizens but "all persons" within the United States.[111] The debates at the time of enactment indicate that the legislators did not intend to limit the protection of the Act to blacks.[112] Both sides in the controversy stated that the Act applied to all persons.[113] The legislators intended to prevent any group from being held in an inferior status by ensuring that only one level of citizenship existed throughout the land.

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[105] *Id.* By passing the 1866 Act, Congress indicated that it considered discrimination in both the rights to purchase and the right to contract a "badge" or "incident". *Id.* at 441. In an early decision the Court refused to regard private denial of public accommodations as a "badge or incident of slavery" under the thirteenth amendment since it had nothing to do with slavery or involuntary servitude. Civil Rights Cases, 109 U.S. 3, 24 (1883). It viewed badges and incidents as those burdens and disabilities on fundamental rights, such as the right to contract and to purchase property, imposed by slavery. *Id.* at 22. Both employment discrimination and the housing discrimination prohibited in *Jones* fall within the earlier Court's definition.

[106] 392 U.S. at 413.

[107] *See* Note, *Jones v. Mayer: The Thirteenth Amendment and the Federal Anti-Discrimination Laws*, 69 COLUM. L. REV. 1019, 1026-27 (1969); 20 CASE W. RES. L. REV. 448, 457-59 (1969).

[108] The thirteenth amendment was one of a series of post-Civil War enactments aimed at terminating the last signs of slavery and ensuring freedom. It was preceded by the wartime Emancipation Proclamation and passed to insure that document's post-war validity. *See* 1 STATUTORY HISTORY OF THE UNITED STATES: CIVIL RIGHTS 13 (B. Schwartz ed. 1970).

[109] *See* J. TENBROEK, EQUAL UNDER LAW 157-73 (1965).

[110] Act of April 9, 1866, ch. 31, § 1, 14 Stat. 27.

[111] *See* 42 U.S.C. § 1981 (1970); note 99 *supra*.

[112] *See* J. TENBROEK, *supra* note 109, at 179; CONG. GLOBE, 39th Cong., 1st Sess. 438 (1866).

[113] *See* United States v. Classic, 313 U.S. 299, 327 (1941); CONG. GLOBE, 39th Cong., 1st Sess. 599, 601 (1866).

Due to its language and its history, section 1981 has been applied to prohibit both racial[114] and non-racial[115] discrimination. If the intent of the framers was indeed to secure universal freedom and to establish equality, then "white citizens," must be interpreted broadly. This standard was selected at a time when, compared with other groups, whites did enjoy superior rights and was intended to indicate the highest form of personal liberty and freedom. The purpose and intent of the framers of the statutory provision, therefore, requires that the law not be limited to racial discrimination or to non-whites.[116]

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[114] Central Presbyterian Church v. Black Liberation Front, 303 F. Supp. 894 (E.D. Mo. 1969); Gannon v. Action, 303 F. Supp. 1240 (E.D. Mo. 1969), *modified on other grounds*, 450 F.2d 127 (8th Cir. 1971). The courts in *Central Presbyterian Church* and *Gannon* held, in effect, that when blacks invaded a white church, whites were denied the rights of "white citizens." *Contra* Perkings v. Banster, 190 F. Supp. 98, *aff'd*, 285 F.2d 426 (4th Cir. 1960) (section 1981 jurisdiction not available to white claiming false arrest). *See also* Dombrowski v. Dowling, 459 F.2d 190, 199 n.24 (7th Cir. 1972) (court suggests without deciding that section 1981 may not apply to white who was denied office rental because associates were blacks); Carter v. Gallagher, 452 F.2d 315 (8th Cir. 1971), *cert. denied*, 406 U.S. 950 (1972) (section 1981 prohibits employment discrimination based on race, whether it is against blacks or whites; court however viewed section 1981 as based on fourteenth amendment); 23 VAND. L. REV. 413 (1970) (discussion of *Gannon*).

[115] *See* Scher v. Board of Educ., 424 F.2d 741, 743 (3d Cir. 1970) (per curiam) (sections 1981 and 1983 do not apply exclusively to racial or religious discrimination; available to boy denied equal protection by arbitrary expulsion from school). *Contra* Schetter v. Heim, 300 F. Supp. 1070, 1073 (E.D. Wisc. 1969). *But cf.* Georgia v. Rachel, 384 U.S. 780, 791-92 (1966) (legislative history of Civil Rights Act of 1866 shows intent restricted to racial equality).

The Court also has upheld anti-peonage statutes based on the thirteenth amendment regardless of the race of the defendant. *See* Clyatt v. United States, 197 U.S. 207, 218 (1905). Section 1981 was enacted to enforce the thirteenth amendment and applies to all races and colors. Buchanan v. Warley, 245 U.S. 60, 78 (1917). However, the Court in *Buchanan* appeared to place some weight on the reenactment of section 1981's predecessor, the Civil Rights Act of 1866, after the fourteenth amendment became effective. *Id.* at 74-76. Two other cases which hold that section 1981 applies to all races and colors appear to rely at least in part on the fourteenth amendment rationale. *See* Takahashi v. Fish Comm'n, 334 U.S. 410, 419 (1948) (section 1981 rests in part on the fourteenth amendment); United States v. Wong Kim Ark, 169 U.S. 649, 695-96 (1898) (acknowledges section 1981's thirteenth amendment basis but uses fourteenth amendment rationale). However, in a recent case involving denial of welfare benefits to resident aliens the Supreme Court indicated that section 1981 was separate from the fourteenth amendment. *See* Graham v. Richardson, 403 U.S. 365 (1971) (state statute violated fourteenth amendment as well as federal power to regulate aliens as carried out by section 1981). Moreover, the *Jones* Court stated that reenactment of the 1866 Act after the fourteenth amendment did not affect the scope of the Act. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 436 (1968).

[116] It has been suggested that limiting the protection of the Act to blacks offends the equal protection clause of the fourteenth amendment. *See*, Note, *The "New" Thirteenth Amendment: A Preliminary Analysis*, 82 HARV. L. REV. 1294, 1315-16 (1969); 20 CASE W. RES. L. REV. 448, 459 n.75 (1969).

The *Jones* Court, while calling segregated housing patterns a "relic" of slavery,[117] applied the term to practices which could be traced only indirectly to the institution of slavery itself.[118] Thus the expression should not be used to limit a "badge or incident" to those employment practices which existed during the period of slavery. If by "relic" the Court meant the discrimination which the black man faces, not because of his former servitude, but because of his current second-class status in society,[119] then that same discrimination is suffered by the handicapped who are isolated and set apart from the mainstream of society.[120] It cannot be said that the handicapped are treated as first class citizens enjoying all of the rights of "white persons." The handicapped, therefore, should be protected by both the thirteenth amendment and section 1981.

Such a view of the amendment and its purpose is consistent with the intention of its framers to secure universal freedom.[121] Even if the framers comprehended no other discrimination than racial, the Constitution is not an inflexible document, frozen by the attitudes and conditions which prevailed at the time of its passage.[122] Rather, the Constitution is a living institution, adaptable to the circumstances of modern society and responsive to the ideal of true equality for all people. Since the courts must determine the significance of constitutional principles by considering their growth as well as their origin,[123] their interpretation of the Constitution can be responsive to the changing social and economic values of the nation.[124] The evil which the thirteenth amendment originally sought to eradicate was the inherent injustice of maintaining a class of people in a position of inferiority. An interpretation of the amendment which includes all persons who suffer from such inferiority, even if not the specific intent of the framers, would be within the spirit of their enactment.[125]

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[117] 392 U.S. at 442-43.

[118] The Court viewed racial ghettoes which are a development of the 20th century as a "relic" of slavery. *Id. But see* Casper, *Jones v. Mayer: Clio, Bemused and Confused Muse*, 1968 S. CT. REV. 89 (description of housing segregation during Civil War).

[119] While some of the discriminatory racial practices existing today may have been in existence at the time of slavery they appear to be based less on former servitude and more on unreasoning prejudice which causes some whites to view blacks as inferior. *See* 392 U.S. at 446 (Douglas, J., concurring).

[120] *See* Lassen, *Voice of the Militant Cripple*, EVENT (Aug. 1969) (published by the President's Committee on Employment of the Handicapped). The isolation may stem in large part from discrimination by employers and school systems. *See* notes 12-16, 78-86 *supra* and accompanying text.

[121] *See* note 103 *supra* and accompanying text.

[122] *See* United States v. Classic, 313 U.S. 299, 316 (1941); Wright v. United States, 302 U.S. 583, 607 (1938). The Constitution is a starting point for developing legal reasoning rather than an aggregate of hard and fast precepts to be handed on and followed from generation to generation. *See* Stone, *The Common Law in the United States*, 50 HARV. L. REV. 4, 23 (1936).

[123] *See* Gompers v. United States, 233 U.S. 604, 610 (1914) (Holmes, J.).

[124] *See* Note, *supra* note 116, at 1302-03. The lawmakers couched the amendment in terms general enough to encompass the total institution of slavery as it developed, responding fully to the evil perceived. *Id.* at 1302. As modern perception of that evil

PUBLIC EMPLOYMENT

While federal agencies are prohibited by law from discriminating against an individual because of a physical handicap,[126] few states have similar statutes. Moreover, the courts have given scant attention to whether a state agency is prohibited from refusing to hire an otherwise qualified person purely on the basis of a physical handicap.[127] The Supreme Court consistently has recognized that the fourteenth amendment, while granting the states power to treat classes of people in different ways,[128] does deny them the power to discriminate on the basis of irrelevant criteria.[129] Thus the Court, although never acknowledging

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grows, the response may assume an increasingly broader scope. *Id.* By rejecting an overly narrow interpretation of the amendment it may be more readily adapted to the "evils" of today's society. *Id.* at 1302-13.

[125] *See* Griffin v. Breckenridge, 403 U.S. 88, 97 (1971) (accords early civil rights statutes a sweep as broad as their language). However, *Griffin* indicated that the thirteenth amendment is closely related to slavery. *See id.* at 105. In another decision the Court dismissed an argument that a city's action to close its pools rather than to integrate them was a badge or incident of slavery. Palmer v. Thompson, 403 U.S. 217 (1971). The Court noted that although the enabling clause of the amendment might allow the passage of legislation to control pool closings, Congress had not chosen to pass such a statute. *Id.* at 227.

[126] *See* 5 U.S.C. § 7153 (1970). Only one action has been brought under this statute. *See* Kletzing v. Young, 210 F.2d 729 (D.C. Cir. 1954) (suit by blind man to be reinstated on Civil Service employment register; brought under section 7153's predecessor; dismissed as moot since register had expired).

The Vocational Rehabilitation Act of 1972 contained a section prohibiting discrimination in federally funded programs. *See* H.R. 8395, 92nd Cong., 2d Sess. § 604 (1972). The Act was vetoed by the President. Weekly Compilation of Presidential Documents, Oct. 30, 1972.

[127] *See* King-Smith v. Aaron, 455 F.2d 378 (3d Cir. 1972), *rev'g* 317 F. Supp. 164 (W.D. Pa. 1970). The Third Circuit, in reversing the abstention-dismissal by the district court, remanded the plaintiff's fourteenth amendment and section 1983 claims and asserted that these claims enjoyed jurisdiction which the federal court had a duty to consider. *Id.* at 381; *see* 42 U.S.C. § 1983 (1970).

[128] *See, e.g.*, Eisenstadt v. Baird, 405 U.S. 438, 446-47 (1970), *citing* Reed v. Reed, 404 U.S. 71, 75-76 (1971); Railway Express Agency v. New York, 336 U.S. 106 (1949); Barbier v. Connally, 113 U.S. 27 (1885).

[129] *See, e.g.*, Eisenstadt v. Baird, 405 U.S. 438, 446-55 (1972) (statute barring sale of contraceptives distinguished between married and unmarried individuals); Reed v. Reed, 404 U.S. 71, 75-76 (1971) (statute gave preference to men in granting letters of estate administration); Morey v. Doud, 354 U.S. 457, 465-66 (1957) (licensing statute exempted one corporation); Armstead v. Starkville Municipal Separate School Dist.,

the existence of a right to public employment,[130] has held that a person constitutionally is protected by the fourteenth amendment from arbitrary employment discrimination by the state.[131]

If a handicapped individual alleges facts which indicate arbitrary employment discrimination, action may be maintained under section 1983 of title 42 of the *United States Code*.[132] Since the action of an agency through its officials is state action within the meaning of the statute, the claim is cognizable.[133] The complainant of course must be prepared to prove that the denial of employment was due to discrimination and not to a lack of proper qualifications.

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325 F. Supp. 560, 569 (N.D. Miss. 1971), *modified*, 461 F.2d 276 (5th Cir. 1972) (racial discrimination in hiring and retaining public school teachers); *accord*, Chambers v. Hendersonville City Bd. of Educ., 364 F.2d 189, 192 (4th Cir. 1966) (en banc). *See also* note 23 *supra* and accompanying text.

[130] For many years government employment and government services have been regarded as privileges, not rights, and thus unprotected by rules of substantive due process. However, such distinctions have been so eroded that the concept remains of doubtful validity. *See generally* Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 HARV. L. REV. 1439 (1968).

[131] *See* Keyishian v. Board of Regents, 385 U.S. 589, 605-06 (1967); Wieman v. Updegraff, 344 U.S. 183, 191-92 (1952). An individual is also constitutionally protected from employment discrimination by the federal government. *See* Colorado Anti-Discrimination Comm'n v. Continental Airlines, Inc., 372 U.S. 714, 721 (1963) (racially discriminatory federal hiring regulation would violate the fifth amendment); United Pub. Workers v. Mitchell, 330 U.S. 75, 100 (1947) (Congress could not enact regulation providing that no Republican, Jew or Negro could be appointed to federal office). *See also* Comment, *Aliens and the Civil Service: A Closed Door?*, 61 GEO. L.J. 207, 215-18 (1972) (federal discrimination and the fifth amendment).

Even if a handicapped individual has a valid claim, he faces, however, the general reluctance of the courts to oversee federal agencies' hiring practices. *See* Comment, *Racial Discrimination in the Federal Civil Service*, 38 GEO. WASH. L. REV. 265, 280 (1969); Comment, *Aliens and the Civil Service: A Closed Door?*, 61 GEO. L.J. 207, 216-17 (1972).

[132] 42 U.S.C. § 1983 (1970). Section 1983 requires two elements: the party must have been deprived of rights secured by the Constitution and laws of the United States; and the deprivation must have been under the color of state law. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970).

Section 1983 was originally section one of the Civil Rights Act of 1871 which was enacted to enforce the provisions of the fourteenth amendment. Mitchum v. Foster, 407 U.S. 225, 238 (1972); *see* Act of Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13, *as amended*, 42 U.S.C. § 1983 (1970). Section one was modeled on section two of the Civil Rights Act of 1866. 407 U.S. at 238; *see* Act of Apr. 9, 1866, ch. 31, § 2, 14 Stat. 27.

[133] The legislative debates surrounding passage of section 1983's predecessor indicate that the discriminatory state action may be executive, legislative or judicial. Mitchum v. Foster, 407 U.S. 225, 238 (1972); *Ex parte* Virginia, 100 U.S. 339, 346-47 (1879). Even an abuse of authority is covered by section 1983. See Monroe v. Pape, 365 U.S. 167, 172 (1961); United States v. Classic, 313 U.S. 325, 326 (1941).

However, the federal government and the District of Columbia are not states within the meaning of the statute. District of Columbia v. Carter, 409 U.S. 418, 419 (1973).

If an action is maintainable under either section 1983 or the fourteenth amendment alone,[134] the handicapped person may have recourse against a number of employers, depending upon their relationship with the state. Under a broad interpretation an action should be maintainable against all public agencies as well as private organizations significantly controlled by the state.[135] The handicapped individual must select the defendant carefully since municipalities may be immune from suit under section 1983.[136] However, recovery has been allowed against entities such as school boards[137] and state universities.[138] Even if an immunity exists, the plaintiff may sue the state employee who deprived him of his rights in the employee's individual capacity.[139] Thus, the handicapped may have a potent means of redress for public employment discrimination.

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[134] An action for denial of equal protection of the laws may be maintained under the fourteenth amendment alone. *See, e.g.,* Griffin v. County School Bd., 377 U.S. 218, 232-33 (1964); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Staub v. City of Baxley, 355 U.S. 313 (1958). One court has held that an action not cognizable under section 1983 against a county could be maintained against the same defendant under the fourteenth amendment. *See* Shelbourne Inc. v. New Castle County, 293 F. Supp. 237, 245-46 (D. Del. 1968). *Contra,* Whitner v. Davis, 410 F.2d 24 (9th Cir. 1969). The requirements for state action are the same under section 1983 and the fourteenth amendment. United States v. Price, 383 U.S. 787, 794 n.7 (1966).

[135] Discrimination in transportation systems has been successfully labelled state action. *See* Kissinger v. New York City Transit Authority, 274 F. Supp. 438 (S.D.N.Y. 1967); note 54 *supra* and accompanying text.

Actions of hospitals, too, have come under judicial scrutiny. *See* McCabe v. Nassau County Medical Center, 453 F.2d 698 (2d Cir. 1971). In *McCabe* the court held that since the hospital was a public institution, the plaintiff need not point to specific state statutes compelling them to act as they did in order to meet the "under color of state law" requirement of section 1983. *Id.* at 703-04. It is the source of the defendant's authority, not only the laws that purport to justify the action, which determine whether the defendant has acted under color of law. *Id.* at 704. Whether or not the state's role in regulating private hospitals would be sufficient to make their actions "state action" has been considered by several lower courts. The majority seem to have concluded that due to the states' role in disbursement of funds under the Hill-Burton Act private discrimination is state action. *See* Simkins v. Moses H. Cone Memorial Hosp., 323 F.2d 959 (4th Cir. 1963) (excellent discussion of Hill-Burton; racial discrimination); Holmes v. Silver Cross Hosp., 340 F. Supp. 125 (N.D. Ill. 1972) (violation of religious belief); Sams v. Ohio Valley General Hosp. Ass'n, 257 F. Supp. 369 (N.D.W. Va. 1966) (discrimination against out-of-state physicians); Hill-Burton Act § 622(f), 42 U.S.C. § 211(e)(f) (1970). *But see* Place v. Shepherd, 446 F.2d 1239 (6th Cir. 1971) (receipt of state or federal funds did not transform private hospitals into public institutions). The court in *Place* indicated, however, that there might be a cause of action if a public hospital refused to hire. *Id.* at 1246.

[136] *See* Monroe v. Pape, 365 U.S. 167, 191 n.50 (1961) (Chicago not "person" under statute). The decision has caused considerable confusion in the circuits, and some courts either have interpreted the Court's statements narrowly or have considered *Monroe* overruled *sub silentio* by later opinions which failed to consider whether the entity sued was proper under section 1983. Other courts have distinguished between actions for damages, such as *Monroe,* and those for equitable relief, or have ignored *Monroe* completely. *See* Johnson v. Cincinnati, 450 F.2d 796 (6th Cir. 1971) (ignored *Monroe*); Harkless v. Sweeney Independent School Dist., 427 F.2d 319 (5th Cir. 1970), *cert. denied,* 400 U.S. 991 (1971) (restricted *Monroe* to its facts and granted equitable relief under section 1983); Schnell v. City of Chicago, 407 F.2d 1084, 1086 (7th Cir. 1969) (*Monroe* limited to money damages); Local 858, Am. Fed'n of Teachers v. School Dist. No. 1, 314 F. Supp. 1069, 1073 (D. Colo. 1970) (*Monroe* rendered irrelevant by Supreme Court cases ignoring it); Note, *Civil Rights—School Officials Not Persons For Purposes*

CONCLUSION

Although concern for the plight of the handicapped may be increasing, they still face serious obstacles in their effort to achieve equal treatment by society. While many areas merit attention, education, physical access, and employment are among the most significant. Although there has been little litigation involving the rights of the disabled, possibilities for redress do exist. By carefully selecting strong cases in which the right denied is extremely important, and the discrimination and damage are evident, the handicapped may be able to achieve some success through the courts. However, the theories discussed herein are only suggestions for legal action; they are largely unexplored and do not preclude the development of other strategies.

It is nonetheless imperative for the handicapped to continue to focus efforts on Congress and the state legislatures. Legislation ensuring the rights of the handicapped would be the most uniform and far reaching solution to the problems presented. The inclusion of the handicapped among those protected by the Civil Rights Act of 1964[140] is the most desirable solution on the federal level. Such an amendment would allow the handicapped access to the Act's complaint mechanisms and to the

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of Section 1983 Regardless of Relief Sought, 24 S.W.L.J. 360, 362-64 (1970) (discussion of cases in which the appropriateness of the entity sued was ignored).

Moreover, one court held that while a police department was not a person for purposes of section 1983, a suit for denial of equal protection could be maintained under section 1981. *See* United States *ex rel.* Washington v. Chester County Police Dep't, 294 F. Supp. 1157 (E.D. Pa. 1969), *aff'd on rehearing*, 300 F. Supp. 1279 (E.D. Pa. 1970). *See generally* Thornberry, *Suing Public Entities Under the Federal Civil Rights Act: Monroe v. Pape Reconsidered*, 43 U. COLO. L. REV. 105, 108-17 (1971); Note, *Developing Governmental Liability Under 42 U.S.C. § 1983*, 55 MINN. L. REV. 1201 (1971); 24 VAND. L. REV. 1252 (1971).

[137] *See, e.g.*, Walton v. Nashville Special School Dist., 401 F.2d 137 (8th Cir. 1968); Rolfe v. County Bd. of Educ., 391 F.2d 77 (6th Cir. 1968); Wall v. Stanley County Bd. of Educ., 378 F.2d 275 (4th Cir. 1967).

[138] *See* Brown v. Strickler, 422 F.2d 1000 (6th Cir. 1970) (no discussion of *Monroe*). *Contra*, Kirstun v. Rector, 309 F. Supp. 184 (E.D. Va. 1970) (relies on *Monroe*).

[139] *See* Monroe v. Pape, 365 U.S. 187, 192 (1961). Suits against the individual, however, may have a limited effect on the public agencies' policies and may produce little in the way of monetary recovery. *See* Note, *Developing Governmental Liability Under 42 U.S.C. § 1983*, 55 MINN. L. REV. 1201, 1209 (1971) (discussing recovery against policemen).

[140] 42 U.S.C. § 2000e (1970).

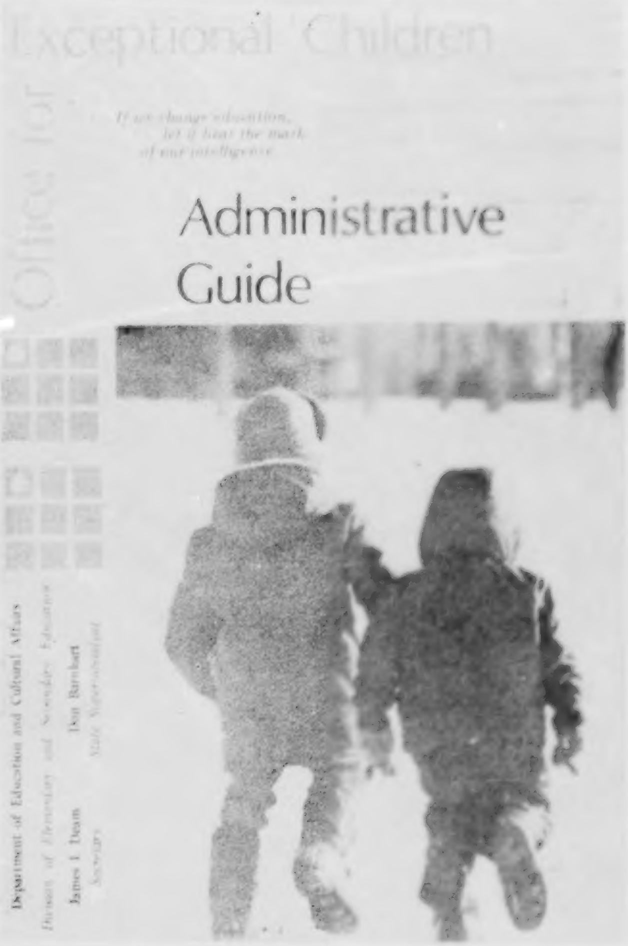
expertise of its enforcement offices. The enactment of legislation will not, however, be the end of the struggle. Rather, it will be the beginning of a process which eventually must ensure that every handicapped individual has an even start with the rest of society.

STATE OF SOUTH DAKOTA
DIV. OF ELEMENTARY & SECONDARY EDUCATION
OFC. FOR EXCEPTIONAL CHILDREN

MIKE ELSBERRY
DIRECTOR

OFC. 224-3678
HM. 224-5569

804 NORTH EUCLID
PIERRE, SO. DAK.



Office for Exceptional Children

If we change education,
let it bear the mark
of our intelligence

Administrative Guide

Department of Education and Cultural Affairs
Division of Elementary and Secondary Education

James E. Doom
Secretary

Don Barnhart
State Superintendent

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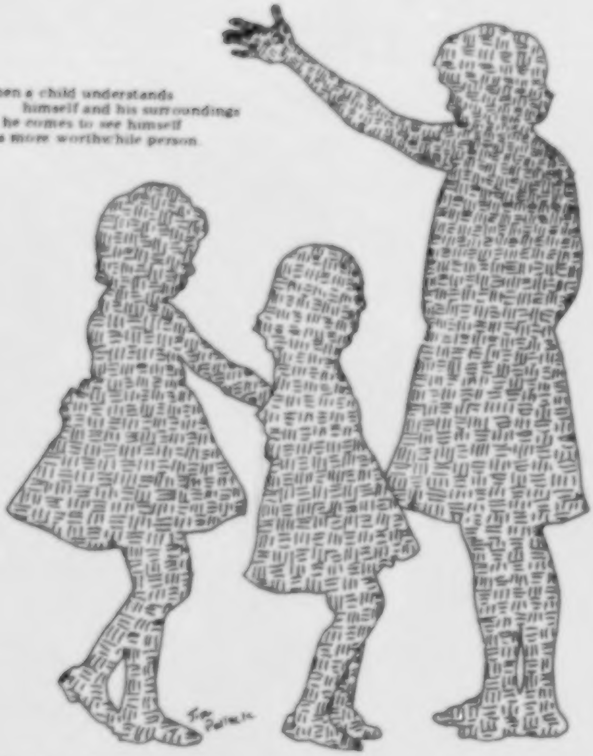
OFFICE FOR EXCEPTIONAL CHILDREN

ADMINISTRATIVE GUIDE



When a child understands
himself and his surroundings
he comes to see himself
as a more worthwhile person.

Department of Education and Cultural Affairs

Division of Elementary and Secondary Education

James I. Deam *Secretary*

Don Barnhart *State Superintendent*

It is hoped that this Administrative Guide will provide an easy reference to school administrators and special educators concerning programs and/or services for handicapped youngsters. If questions arise or consultative help is desired, feel free to contact one of the staff members listed below.

PIERRE: (Telephone No. 224-3678)
Mike Elsberry, Administrator, Office for Exceptional Children
R. Maxine Schultz, Coordinator, Federal Programs
Randall Morris, Coordinator, Federal Programs
Jan Hipple, Administrative Assistant
Position Open, Coordinator, Speech and Hearing

ABERDEEN: (Telephone No. 622-2221, Northwest Learning Center)

James Minor, Coordinator, Regional Resource Center, N.S.C.
Claudia Prentice, Consultant Supervisor, Northeast Learning Center, N.S.C.
* Helen Watson, Educational Technologist, Northeast Learning Center, N.S.C.
* Georgia Ramos, Educational Strategist, Educational Resoure Center, N.S.C.
* Bertha Carter, Educational Strategist, Educational Resource Center, N.S.C.
** E. Hugh Woods, Director, Deaf-Blind Program, School for Visually Handicapped
** Mrs. Marilyn Thaden, Speech Therapist, Deaf-Blind Program
** Janice Spilde, Teacher Aide, Deaf-Blind Program
** Paula Mills, Child Care Worker, Deaf-Blind Program
** Francis Lightfoot, Child Care Worker, Deaf-Blind Program

SPEARFISH – RAPID CITY:
(Telephone No. 642-6145, West River Learning Center)

Larry Magliocca, Consultant Supervisor, West Learning Center, Spearfish
*** Linda Eigenberg, Teacher, Pre-School Program, Rapid City
*** Linda Kogan, Supervisor, Pre-School Program, Rapid City
*** Cheryl Schamp, Assistant Teacher, Pre-School Program, Rapid City

VERMILLION: (Telephone No. 677-5370, Southeast Learning Center)

Gary West, Consultant Supervisor, Southeast Learning Center, U.S.D.
**** Harry Houser, School Psychologist, Southeast Learning Center, U.S.D.

* Contracted employer - Northern State College
** Contracted employer - School for the Visually Handicapped
*** Contracted employer - Rapid City Public Schools
**** Title VI-D Fellowship

PSYCHOLOGICAL SERVICES: (Telephone No. 224-3473)

Robert Huckins, Director, Pierre
Charles R. Logan, State Psychologist, Pierre

ELIGIBILITY OF CHILDREN

State Law does not specify any type of specific handicapping condition or eligibility. SDCL 13-37-1 defines exceptional children as "all children under the age of twenty-one who are residents of the State of South Dakota and who, because of their physical or mental conditions, are not adequately provided for through the usual facilities of the public school."

ALTHOUGH IT MAY BE NECESSARY TO PROVIDE AN EVALUATION BY A QUALIFIED PSYCHOLOGICAL EXAMINER TO CERTIFY THE ELIGIBILITY OF A CHILD, THIS IS NOT REQUIRED.

As a general rule, any child placed in a self-contained and/or segregated special classroom, program, or building, should be evaluated by a qualified psychological examiner prior to placement. Please contact your Regional Special Education Supervisor for the appropriate procedure.

Any child considered "exceptional" who is provided for through "special programming" within the regular classroom, in services directly related to the regular classroom, or in partially or fully integrated programs need not be evaluated by a qualified psychological examiner. Please contact your Regional Special Education Supervisor for appropriate procedures.

IT IS NOT THE INTENT OF THIS OFFICE TO CLASSIFY CHILDREN AS "MENTALLY RETARDED," "EMOTIONALLY DISTURBED," ETC. It is rather the intent to provide appropriate prescriptive services for all children under the age of twenty-one who are not adequately provided for through the usual facilities and services of the public schools.

Local school districts have the responsibility to meet the needs of resident exceptional children through a variety of options with technical assistance of this office and of the Office of Psychological Services. Only in cases where the local school district has avoided or abused this responsibility will this office exercise the provision of 13-37-7 (see page 6).

AUXILIARY SERVICES

Auxiliary Services are services provided for children on an individual basis, either to support placement in a special education program or in lieu of such services provided within the school setting.

EVALUATIONS:

Psychological--As established by the State Board of Education, after October 30, 1970, the fee for each evaluation will be $25 with the state paying $15 and the local school district paying $10. The Office of Psychological Services will pay the total $25 to the examiner when the report of the psychological evaluation is received, and the school district will be billed each quarter for the district's share of the fee. All requests for psychological evaluations through the Office of Psychological Services should be made using Form SEPS-1 (Request for Psychological Evaluation). The form should have the signature of someone in an administrative capacity in the school since there is an obligation of school district funds. If state funds are to be obligated, the request for services (Form SEPS-1) should be approved by the Division prior to the time the evaluation is done.

Speech and Hearing--for evaluations requested through the Office for Exceptional Children, the fee will be $15. The state will pay $10, the school district will be charged $5. Referrals will be assigned to individuals or agencies designated for this purpose. Request form SH-2 is required. In addition to the above fees, mileage at state rates will be allowed for the individual doing the evaluation. This will be paid by the state.

SERVICES:

Speech Therapy--Speech therapy and/or language development programs for children identified as learning disabled and/or speech impaired are included in the school district's responsibility to provide appropriate instruction or services.

Physical Therapy--Children requiring therapy are also a responsibility of the local school district under "appropriate education for exceptional children."

Tutoring--See Homebound Instruction under Special Education Programs within a district.

Sight-Saving and Braille Materials--Large print and Braille textbooks, and other visual aids for visually handicapped children are available from the Office for Exceptional Children, Department of Public Instruction, on a loan basis. Disability must be determined by an ophthalmologist on a Visual Disability form provided by the Division.

Classroom Amplifiers--Classroom amplifiers are provided children with hearing impairments. The school administrator should contact the Office for Exceptional Children for procedures in obtaining such an appliance. Personal hearing aids cannot be provided.

School-To-Home Telephone Installation--If a child is unable to attend school because of a physical disability, a school-to-home telephone installation may be provided. The state will pay the installation charges, the district will be responsible for the monthly service charges. The telephone bill should be made out to the school district, and the district may request reimbursement from the Office for Exceptional Children for the installation charges. Form OEC-2 is required.

PRIVATE FACILITIES:

An exceptional child may be assigned to a private facility not yet approved for exceptional children if it is determined that that facility can best meet the educational needs of that child. This can only be done with the approval of the Office for Exceptional Children. Formal evaluation by a qualified psychological examiner, psychiatrist, and/or physician, as applicable, will usually be required prior to placement. Please contact your regional supervisor.

OUT-OF-STATE PLACEMENT:

Placement in facilities out of state is limited to children for whom no appropriate facilities are available within the state. To initiate such placement, the school or parents should contact the Regional Supervisor of the Office for Exceptional Children.

Due to the complexity of arrangements for out-of-state placement for emotionally disturbed children, these placements are handled cooperatively by the Office for Exceptional Children, Division of Child Welfare, and the Commission on Mental Health and Mental Retardation. Evaluations for children requiring this service are arranged for by the placement agencies. Currently, the Southeastern Mental Health Center, Sioux Falls, performs the evaluations and recommends the placement for the services required. The above agencies have retained the Center on a consulting basis. Financial arrangements might include the above-named agencies, the parents or guardians, and the local school district.

FINANCIAL RESPONSIBILITY OF DISTRICT:

The resident district's responsibility for a child placed in a private school for exceptional children will be an amount not to exceed the legal high school tuition rate per day, to be billed by the private school (to the Office for Exceptional Children for out-of-state placement); board and room not to exceed $3 per day if the child must be boarded away from home, or transportation if the child must be transported each day.

SCHOOL RESPONSIBILITY TO EXCEPTIONAL CHILDREN

Programs and services for exceptional children are regulated by SDCL Chapter 13-37. This law, which became effective July 1, 1969, places the responsibility for programs for exceptional children with the school district in which the exceptional child has school residence.

It has become increasingly apparent that many school districts are unaware of their responsibility in providing for exceptional children. SDCL 13-37-14.1 clearly states school district responsibility:

SDCL 13-37-14.1 It shall be the responsibility of the governing board of a school district to provide all of its resident exceptional children with an appropriate educational program. The placement of an exceptional child in an appropriate educational program which is operated jointly with other school districts shall constitute the provision of an appropriate educational program. The placement of an exceptional child with the approval of the department into an appropriate educational program in cases where it is unreasonable for the resident school district to provide the program shall constitute the provision of an appropriate educational program for that exceptional child.

SDCL 13-37-1 "Exceptional children" means all children under the age of twenty-one who are residents of the state of South Dakota and who, because of their physical or mental conditions, are not adequately provided for through the usual facilities and services of the public school.

SDCL 13-37-7 The Superintendent with the advice of the Division shall have the authority to assign children to a vendor for purposes of special education as provided in this Charter. Such assignments must indicate the beginning date for, and the nature of, the specific service to be provided. When a child has been so assigned, the school district wherein such child has school residence shall be responsible for the costs of such special education to the extent hereinafter provided.

SDCL 13-37-15 The governing boards of all school districts in the state, with the assistance of their administrative personnel and the Division, shall on or before the tenth day of July of each year make an estimate of the number of exceptional children residing within the school district who are entitled to and probably will avail themselves of school privileges as exceptional children during the current school year and shall then estimate and compute the total cost of furnishing special education to all such exceptional children within the district.

SDCL 13-37-8.8 The costs of maintenance, including both board and room, shall be provided by the district wherein the exceptional child has school residence and shall not exceed three dollars ($3) per day per child and shall be paid from that district's special education fund.

SDCL 13-37-8.9 Where appropriate transportation is not provided by the school district, any exceptional child, when legally assigned, shall be eligible for necessary transportation at seven cents (7 cents) per mile not to exceed six hundred dollars ($600) per fiscal year. The district wherein an exceptional child has school residence shall pay the transportation expenses from the district's special education fund.

PERSONNEL ELIGIBLE FOR STATE AID REIMBURSEMENT

The salaries of the following special education personnel, certified by the Department of Public Instruction, will be included for the purpose of special education state aid reimbursement.

Certified Teachers of Exceptional Children and Teacher Aides
Director of Special Education
Speech Clinician
Physical Therapist
Psychologist
Social Worker

METHOD OF DETERMINING STATE AID REIMBURSEMENT: The Legislature provides an appropriation to support approved special education programs. This appropriation is used to reimburse school districts a percentage of their cost of special education. The cost of special education incurred by a school district shall be determined by dividing the total salaries of special education personnel by 80 percent.

EXAMPLE: The salary of a special education staff member is $8,000.

10,000 = cost of special education program.
80/8,000

The $10,000 will be the amount upon which special education state aid will be based. It has been necessary to prorate this amount at approximately twenty percent from funds appropriated by the Legislature for this purpose. State reimbursement on the example given, prorated at twenty percent, would be $2,000.
Application and report forms will be furnished by the Office for Exceptional Children.

METHOD OF DETERMINING COSTS FOR NON-RESIDENT PUPILS: "The cost of special education which exceeds that which is provided as state aid by the Legislature shall be the responsibility of the school district wherein the exceptional child has school resident." Assuming the above example, the following steps would be used in determining charges to be made for non-resident pupils (this is IN LIEU of tuition rate previously used).

1. Determine total cost of special education-EXAMPLE	$10,000
2. Subtract state aid (approximately 20%)	-2000
3. Divide by total number of pupils in the program (use ADM), enrollment of 8 is used as an example*	1,000 8/8,000
4. Cost to sending school district for each child in the special education program.	1,000

*Every child is counted regardless of the number of hours per day he spends in the special program.

SCHOOL DISTRICT SPECIAL EDUCATION FUND

LEVY:

The law provides that a school district may request an amount not to exceed two mills to support its special education fund. In addition to those children who are currently assigned to special education programs or services, the district must take into consideration the possibility of the establishment of new programs and the identification of additional children who would require special services, and/or the expansion of all existing services!

All receipts for services to exceptional children must be posted to the school district's "special education" fund. Expenditures for services for exceptional children out of the district must be paid through the school district's special education fund. Expenditures for services for exceptional children in programs or classrooms within the district and district-operated may be made through the general fund, Title I, or other sources, as well as the 2 mill levy. However, Title I monies cannot be used for self-contained programs for exceptional children unless the school district levies the maximum two mills.

TRANSPORTATION

(out of district services)*

FULL-TIME PROGRAM If a child has been assigned to a program and must be transported to the facility, the resident school district shall pay mileage. The rate of mileage paid to the parents for transporting the child from his home to school and back would be 7 cents per mile, up to $600 per year. There is no provision for the 2 1/2 free miles.

The mileage cost also applies to auxiliary services not provided by the school district, such as speech therapy, physical therapy, family counseling, tutoring. and other related services.

*Includes in-district services in non-district operated programs.

IN–STATE FACILITIES: Private facilities approved for assignment of exceptional children in South Dakota include:

Mentally Retarded:

Black Hills Workshop
3603 Range Road (P.O. Box 1550)
Rapid City, South Dakota 57701

Mitchell Adjustment Training Center
8th & Mentzer
Mitchell, South Dakota 57301

Aberdeen Adjustment Training Center
111 South Washington
Aberdeen, South Dakota 57401

Sioux Vocational School for the Handicapped
4100 South Western Avenue
Sioux Falls, South Dakota 57105

Yankton Adolescent Treatment Center
% Yankton State Hospital
Yankton, South Dakota 57078

Emotionally Disturbed:

Woodfield Center
Beresford, South Dakota 57004
(Ed. Prog. by Beresford Dist.)

South Dakota Children's Home Society

1000 W. 28th
Sioux Falls, SD 57105

McCrossan's Boys Ranch
Sioux Falls, South Dakota 57105

Sky Ranch for Boys
Sky Ranch (Buffalo Co.) S.D.

West River Children's Center
Keystone Route, Box 38A
Rapid City, South Dakota 57701

Lutheran Social Services
100 North Hemlock
Pierre, South Dakota 57501
(Ed. Prog. by Pierre Dist.)

Bertha Bragstad Hall
Lutheran Social Services
600 West 12th Street
Sioux Falls, South Dakota 57105
(Ed. Prog. by Sioux Falls Dist.)

Learning Disabilities:

Black Hills Guidance & Learning Center
821 Jackson Blvd.
Rapid City, South Dakota 57701

Aberdeen Learning Disability Center
Rural Route 2
Aberdeen, South Dakota 57401

Physically Handicapped:

Crippled Children's Hospital and School
2501 West 26th Street
Sioux Falls, South Dakota 57105

An exceptional child may be assigned to a facility not yet approved for exceptional children if it is determined that that facility can best meet the educational needs of that child. This can only be done with the approval of the Office for Exceptional Children. Formal evaluation by a qualified psychological examiner, psychiatrist, and/or physician, as applicable, will usually be required prior to placement. Please contact your regional supervisor.

PROCEDURES FOR PROGRAM APPROVAL

Program approval is in part based on the employment of *certified teachers of exceptional children. At the beginning of the school year, the following forms will be sent to the school to be used in making application for approval of the school district's special education program:

OEC-1 – Program Approval Application:

Forms carry all necessary instructions. Up-dates will be required each year.

OEC-2 -- Notification of Approval for Out-of-District Services for Exceptional Children:

This form must be completed and submitted on all NON-RESIDENT pupils. A copy will be sent to the child's resident district as that district's authority to pay special education costs for the child, one will be sent to the district providing services, one copy will be sent to the OEC office in Pierre, and one copy retained by the Regional Consultant, who shall be the approving agent.

Dismissals and New Enrollments During School Year:

A supply of forms will be sent to the school to be used in reporting to the Office for Exceptional Children when a child is dismissed; also, this same form is used to indicate when a child is enrolled after the initial application and roster have been submitted. Eligibility requirements are listed above. An

OEC-2 form must be submitted if the new enrollee is a NON-RESIDENT pupil.

* Teachers under temporary certification on an "Authority to Act" are included.

A. Exceptional children may be:

1. Learning Disabled--e.g., specific learning problem as in visual, auditory or motor.
2. Speech Impaired--e.g., articulation, voice stuttering, delayed speech, cleft palate, cerebral palsey.
3. Language Impaired--e.g., inability to receive language, integrate language, express language, or delayed language.
4. Hearing Impaired--e.g., specific hearing loss.
5. Emotionally Disturbed--e.g., may be a behavior problem
6. Retarded--e.g., slow learner due to restricted ability.
7. Gifted--e.g., specifically talented in academic or other areas.
8. Physically Handicapped--e.g., medical problem which interferes with education.
9. Visually Handicapped--e.g., visual impairment.

B. Needs of exceptional children may be identified in the following manner:

1. Survey of the school population by:
    a. teachers
    b. administrators
    c. and specialists such as USD Mobile Speech & Hearing Unit, Special Education personnel.
2. Estimate of population based on national percentages
    a. Learning Disabled - 10%
    b. Speech & Hearing Disabled - 7 to 10%

C. Kinds of Programs for Exceptional Children:

1. Learning Disabilities Program
    a. Itinerate learning disabilities teacher
    b. Learning disabilities resource center or room
    c. Special education strategist trained in L.D.
2. Speech, Language and Hearing Program
    a. Itinerate Speech and Hearing Clinician
    b. Speech and Hearing Consultant/Clinician plus aides
    c. Language Development Specialist
3. Program for Retarded
    a. Resource classroom-time in special instruction based on the needs of the child.
4. Emotionally Disturbed
    a. Counselor/Strategist to provide assistance to teachers
    b. Resource room

D. Sample Design of Total Program for Exceptional Children.

1. Special Education Administrators may be specialist in any area of exceptionability with broad experience
   a. Secretary
2. Speech and Hearing Clinician
   a. Aides as necessary
3. Learning Disabilities Teacher
   a. Aides as necessary
4. Special Education Teacher
   a. Aides as necessary
5. Language Development Specialist for pre-school and lower elementary
6. Hearing Specialist
   a. Aides as necessary

SPECIAL EDUCATION

SDCL:

13-37-1. Exceptional children defined.--As used in this chapter, unless the context otherwise requires, "exceptional children" means all children under the age of twenty-one years who are residents of the state of South Dakota and who, because of their physical or mental conditions, are not adequately provided for through the usual facilities and services of the public school.

13-37-2. Special education defined--Conformity to state course of study where possible.--As used in this chapter, unless the context otherwise requires, "special education" means classroom services and auxiliary services provided exceptional children pursuant to the provisions of this chapter and shall include school instruction conforming as nearly as possible to the established state course of study under duly qualified special education teachers or other necessary services, or both, to the extent that the exceptional child is capable of profiting by specialized instruction.

13-37-3. Vendor defined.--As used in this chapter, unless the context otherwise requires, "vendor" means a school district, individual, or private nonprofit institution which furnishes facilities or services, or both, for the special education of exceptional children.

13-37-3.1. Definition of terms.--As used in this chapter, unless the context otherwise requires:
(1). "Classroom services" means instruction provided exceptional children by qualified teachers, instructional materials and equipment needed for special education purposes, and necessary classroom supervision and assistance;

(2) "Auxiliary services" means diagnosis, therapy, vocational counseling, vocational rehabilitation and training, homebound instruction, and such other necessary services other than classroom which might be approved by the state board of education;
(3) "Cost of special education" means the cost of providing special education to "exceptional children" as defined in this chapter;
(4) "School residence" means the legal school residence of the child as defined by law;
(5) "Board" means the state board of education;
(6) "Department" means the state department of public instruction;
(7) "Superintendent" means the state superintendent of public instruction;
(8) "Division" means the division of pupil personnel services of the state department of public instruction; and,
(9) "District" means a public school district of the state of South Dakota.

13-37-4. Handicap evidenced by certificate of qualified person or physician.--In order for an exceptional child to receive the benefits provided herein, the nature of the handicap must be evidenced by a certificate of a qualified person or physician as defined by the board and by such information furnished to the division.

13-37-5. Repealed by omission from SL 1969, ch 58.
13-37-5.1 Evaluation to determine child's capability of profiting from program--Continued eligibility dependent on progress.-- After a period of two years and each subsequent year thereafter, the division shall determine whether or not an exceptional child is capable of profiting by specialized instruction. An exceptional child shall be regarded as eligible for the benefits of this chapter only so long as the child's progress under this program can be determined to exist; such determination to be in accordance with standards and regulations promulgated by the division with the consent of the superintendent and approval of the board.

13-37-6. Exclusion from benefits of children in state-supported institutions.-- For the purposes of this chapter, all exceptional children who are receiving state institutional care shall be excluded from the benefits provided herein during the time that they are actually in such institutions.

13-37-7. Assignment of children for special education--School district responsible for costs.--The superintendent with the advice of the division shall have the authority to assign children to a vendor for purposes of special education as provided in this chapter. Such assignments must indicate the beginning date for, and the nature of, the specific service to be provided. When a child has been so assigned, the school district wherein such child has school residence shall be responsible for the costs of such special education to the extent hereinafter provided

13-37-8. Repealed by SL 1968, ch. 51.

13-37-8.1. Determination and payment of costs.--The costs of the special program shall be determined and covered as provided in 13-37-8.2 to 13-37-8.10, inclusive.

13-37-8.2. Computation of cost incurred by school district.--The cost of special education incurred by a school district shall be determined by dividing the total salaries of special education personnel by eighty per cent.

13-37-8.3. Cost of special education paid by state.--The cost of special education as determined in 13-37-8.2 shall be paid by the superintendent of districts in an amount that may be provided as state aid by the Legislature from funds available to the department at a ratio as determined by dividing the total state cost by the legislative appropriation.

13-37-8.4. Excess costs paid by school district.--The cost of special education which exceeds that which is provided as state aid by the Legislature shall be the responsibility of the school district wherein the exceptional child has school residence through its source of revenue provided in 13-37-16.

13-37-8.5. Repealed.

13-37-8.6. Establishment of charges for auxiliary services--Payment of costs of assigned children.--The superintendent is hereby authorized and directed to establish special rates of charges for the various types of auxiliary services, provided on an individual case basis, as defined by subdivision (2) of s 13-37-3.1. or as hereinafter may be approved by the board. In the case of assigned exceptional children the costs thereof except as may be provided as state aid by the Legislature from available funds for this purpose to the department and paid by the superintendent to the vendors, shall be paid from the special education fund of the district wherein the exceptional child has school residence.

13-37-8.97. Tuition charges.--Tuition for the exceptional children who are assigned by the division to attend a private school or institution for special education shall be at the legal rate of tuition as provided by state law for secondary schools regardless of the classification of an exceptional child. Such tuition shall be paid from the special education fund of the distict wherein the exceptional child has school residence.

13-37-8. 8. Maintenance costs paid by school district.--The costs of maintenance, including both board and room, shall be provided by the district wherein the exceptional child has school residence and shall not exceed three dollars per day perchild and shall be paid from that district's special education fund.

13-37-8.9. Mileage allowance in lieu of transportation for special education--Source of payment.--Where appropriate transportation is not provided by the school district, any exceptional child, when legally assigned, shall be eligible for necessary transportation at seven cents per mile not to exceed six hundred dollars per fiscal year. The district wherein an exceptional child has school residence shall pay the transportation expenses from the district's special education fund.

13-37-8.10. Payments credited to special education fund.--Payments received by a school district for special education shall be credited to the special education fund of the school district.

13-37-9. Repealed by SL 1968, ch 51.

13-37-10. Repealed by SL 1968, ch 51.

13-37-11. Repealed by SL 1968, ch 51.

13-37-12. Repealed by SL 1968, ch 51.

13-37-13. Restriction on expenditures to state-owned institutions.--Neither the superintendent, nor any school district or county shall expend any public funds under the provisions of this chapter for the education of exceptional children to any state- owned institution, either within or outside of South Dakota except for services not provided within the state of South Dakota.

13-37-14. Program established by superintendent--Rules and regulations--Administration, individual auxiliary services, and state aid as separate programs.--The superintendent is hereby authorized and directed to implement a special education program for the state under the supervision of the division and to prepare for the consideration and approval of the board such rules and regulations as may be consistent with this chapter and which in his judgment are necessary to accomplish its purposes. For the purposes of this chapter, administration, individual auxiliary services, and state aid for special eduation are to be treated as separate programs and shall be specifically delineated as such in the department's budget request for state funds.

13-37-14.1. District responsibility to provide appropriate program--Joint programs--Placement outside district.--It shall be the responsibility of the governing board of a school district to provide all of its resident exceptional children with an appropriate educational program. The placement of an exceptional child in an appropriate educational program which is operated jointly with other school districts shall constitute the provision of an appropriate educational program. The placement of an exceptional child with the approval of the department into an appropriate educational program in cases where it is unreasonable for the resident school district to provide the program shall constitute the provision of an appropriate educational program for that exceptional child.

13-37-15. Annual estimate by governing board of districts of special education costs for coming year.--The governing boards of all school districts in the state, with the assistance of their administrative personnel and the division, shall on or before the tenth day of July of each year make an estimate of the number of exceptional children residing within the school district who are entitled to and probably will avail themselves of school privileges as exceptional children during the current school year and shall then estimate and compute the total cost of furnishing special education to all such exceptional children within the district. .

13-37-16. District tax levy for special education--School district special education fund--Initial levy for payment of claims for assignment of children.--It shall then be the duty of the governing board of the school district to include in the current district tax levy, not to exceed two mills on the dollar of assessed valuation, as a special levy in addition to all other levies authorized by law for the amount so determined to be necessary, and such levy shall be spread against all of the taxable property of the district. The proceeds derived from such levy shall constitute a school district special education fund of the district for the payment of costs for the special education of all exceptional children who reside within the district pursuant to the provisions of ss 13-37-8.1 to 13-37-8.10, inclusive.

Every district, even though not operating a special education program, shall make an initial levy in order to ensure the payment of claims arising under the provisions of this chapter for the assignment of exceptional children.

13-37-16.1. Eligibility of vendors to collect for services.--Vendors eligible to collect for services from the school district special education fund shall be those which have furnished facilities and services for the special education of exceptional children pursuant to the provisions of this chapter.

13-37-17. Claims for special education costs paid from special education funds.--Claims for any costs incurred for special education of exceptional children prior to the end of the first semester of the 1968-69 school year shall be paid from the county special education fund created by chapter 43 of the Session Laws of 1966. All claims for any costs of special education subsequent to the end of the first semester of the 1968-69 school year shall be processed and paid from the school district special education funds as provided in this chapter.

13-37-18. Filing of vendors' claims.--Within one year after the close of the school year, every vendor entitled to receive payments for costs for the special education of exceptional children from a district as herein provided shall file with the governing board of each such district from which payments are due an itemized, verified claim on account of each student receiving such special education for exceptional children and for whom payment is due for the preceding school year or any part thereof. Claims for the first semester of such costs may be filed for payment at the end of said semester.

13-37-19. Auditing and approval of claims--Responsibilities of state and district governing board.--Before payment, each claim shall be audited and approved on the basis of legal assignments from the superintendent by the governing board of the district against which such claim is filed. Judgment on the merits of any particular claim shall be the responsibility of the superintendent. The responsibility of the district governing board is to ensure that the proper evidence to justify payment is presented.

13-37-20. Payment of claims for direct services.--Private, non-profit institutions providing a service directly to exceptional children under the provisions of this chapter shall recover authorized costs from the county special education fund for so long as it is obligated for the payment of claims under the provisions of this chapter, and thereafter from the school district special education fund monthly.

13-37-20.1. Continuation of county special education fund--Additional levies authorized--Reversion of funds to general fund.-- The board of county commissioners of each of the several counties in the state is hereby authorized and empowered to continue the existence of the county special education fund heretofore provided pursuant to the provisions of chapter 43 of the Session Laws of 1966 and to make such additional levies as might be required to satisfy the payment of all outstanding claims for which said fund will be liable for the special education of exceptional children through the first semester of the 1968-69 school year and to process such claims pursuant to the procedures established by that act.

As of January 1 of 1970, or at any time prior thereto that any county is certified by the superintendent as having no further obligations as may have arisen pursuant to said chapter 43 or the provisions of this chapter, the county special education fund shall cease and be of no effect and the funds remaining therein, if any, shall revert to the general fund of the county in which they were levied.

13-37-21. State revolving fund for special education payments--Appropriations and reimbursements paid into fund.--A revolving fund for payments on a monthly basis shall be established in the office of the state treasurer by the superintendent to facilitate payments to vendors providing services on a monthly basis. The revolving fund shall be established with funds transferred from moneys appropriated by the Legislature to take care of the state's share of the costs of the total special education program, and the fund shall be partially maintained through reimbursement to the fund from counties pursuant to their obligations as limited by this chapter through the first semester of the 1968-69 school year, and thereafter from school districts, and from other agencies involved for their share of the costs of the programs. The amount to be transferred to the revolving fund will be based on the estimated number of cases to be served during the fiscal year.

13-37-22. Monthly payments to vendors from state revolving fund--Reimbursement of fund.--Vendors which are individuals or private, nonprofit institutions and which provide services to legally assigned exceptional children on an individual or out-patient basis under the provisions of this chapter shall be paid on a monthly basis from the state revolving fund established by s 13-37-21 and such fund shall be reimbursed for such payments from the county special education fund for so long as such funds are liable for claims pursuant to this chapter, and thereafter from the school district special education fund upon vouchers duly presented to the county or school district, as the case may be, by the superintendent for its share of such expenditures on a monthly basis.

STATE OF WISCONSIN

1973 Senate Bill 185 Date published*: August 8, 1973

CHAPTER 89 , LAWS OF 1973

AN ACT to renumber 121.54 (4) and 121.58 (4); to amend 118.15 (3) (a) 2 and 3 and (b), 119.28 (1), 121.05 (1), 121.14 (1) (intro.) and (2) (b) and (c), 121.15, 121.16, 121.54 (3), 121.58 (2) (b) and (3) and 121.79 (1) (c); to repeal and recreate subchapter IV of chapter 115; and to create 15.377 (4), 115.28 (7) (c), 115.52 (7), 121.135, 121.54 (4) (b) and 121.58 (4) (b) of the statutes, relating to recodification of the laws pertaining to special education of children with exceptional educational needs, authorizing payment of state aids, granting rule-making authority and increasing an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. LEGISLATIVE POLICY. (1) It is the policy of this state to provide, as an integral part of free public education, special education sufficient to meet the needs and maximize the capabilities of all children with exceptional educational needs.

(2) Furthermore, it is the policy of this state to ensure that each child who has exceptional educational needs is provided with the opportunity to receive a special education at public expense suited to his individual needs. To obtain this end, the legislature recognizes the necessity for a flexible program of special education and for frequent reevaluation of the needs, capabilities and progress of a child with exceptional educational needs.

(3) The legislature also recognizes that it is the responsibility of the school district in which a child with exceptional educational needs resides to ensure that the child is able to receive an education at public expense which is tailored to his needs and capabilities. Special assistance, services, classes or centers shall be provided whenever necessary.

(4) Preference is to be given, whenever appropriate, to education of the child in classes along with children who do not have exceptional educational needs. Where it is not desirable to educate the child who has exceptional educational needs with children who do not have such needs, the child shall be provided with whatever special education is appropriate.

(5) Additionally, the legislature recognizes that it is the

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*Section 990.05. *Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

right of every parent to provide for his child an education of the parent's choice at his own expense.

SECTION 2. 15.377 (4) of the statutes is created to read:

15.377 (4) COUNCIL ON SPECIAL EDUCATION. There is created in the department of public instruction a council on special education consisting of 15 members appointed by the state superintendent for 3-year terms. No more than 7 members of the council may be persons who do not have children with exceptional educational needs and who are representatives of the state, school districts, county handicapped children's education boards or cooperative educational service agencies. At least 5 members of the council shall be parents or guardians of a child with exceptional educational needs, at least one member of the council shall be a school board member, at least one member shall be a certified teacher of regular education as defined in s. 115.76 (9) and at least one member shall be a certified teacher of special education.

SECTION 3. 115.28 (7) (c) of the statutes is created to read:

115.28 (7) (c) License, certify and make rules and prescribe standards of attainment for the examination, licensing and certification of persons, including teachers, employed by special education programs as defined in s. 115.76 (10).

SECTION 4. 115.52 (7) of the statutes is created to read:

115.52 (7) The Wisconsin school for the deaf may provide instruction for preschool deaf children and their parents. The Wisconsin school for the visually handicapped may provide instruction for preschool visually handicapped children and their parents. Such instruction or treatment shall be subject to the approval of, and shall comply with requirements established by, the department.

SECTION 5. Subchapter IV of chapter 115 of the statutes is repealed and recreated to read:

SUBCHAPTER IV

CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS

115.76 DEFINITIONS. In this subchapter:

(1) "Administrator" means the administrator of the division for handicapped children.

(2) "Child" means any person under the age of 21 years, except as otherwise provided.

(3) "Child with exceptional educational needs" means any child who has a mental, physical, emotional or learning disability which, if the full potential of the child is to be attained, requires educational services to the child to supplement or replace regular education. Children with the following conditions, in addition to children with such other conditions as the state superintendent determines, may require educational services to supplement or

replace regular education:

(a) Physical, crippling or orthopedic disability.

(b) Mental retardation or other developmental disabilities.

(c) Hearing impairment.

(d) Visual disability.

(e) Speech or language disability.

(f) Emotional disturbance.

(g) Learning disability.

(h) Pregnancy, including up to 2 months after the birth of the child or other termination of the pregnancy.

(i) Any combination of conditions named by the state superintendent or enumerated in pars. (a) to (h).

(4) "Division" means the division for handicapped children.

(5) "Expanded program" means any program which has increased its educational services, facilities or staff in such manner and degree as specified in written standards issued by the state superintendent.

(6) "Parent" includes a guardian.

(7) "Part of a program" means that portion of a program in which a child with a particular type of exceptional educational need participates.

(8) "Reduced program" means any program which has decreased its educational services, facilities or staff in the manner and degree specified in written standards issued by the state superintendent.

(9) "Regular education" means the educational program provided by a public or private school for children who do not have exceptional educational needs.

(10) "Special education" means any educational assistance required to provide an appropriate education program for a child with exceptional educational needs and any supportive or related service.

115.77 DIVISION FOR HANDICAPPED CHILDREN. (1) APPOINTMENT OF ADMINISTRATOR. The state superintendent shall appoint the administrator.

(2) DUTIES OF ADMINISTRATOR. Subject to the direction of the state superintendent, the administrator:

(a) Shall appoint qualified personnel necessary to perform the duties required of the division.

(b) Shall audit expenditures incurred for children with exceptional educational needs.

(3) SPECIAL EDUCATION RESPONSIBILITIES. The division shall be responsible for:

(a) Services for children with exceptional educational needs who are under the jurisdiction of the state superintendent and for the Wisconsin school for the deaf and the Wisconsin school for the visually handicapped.

(b) 1. Provision of facilities for diagnosis through orthopedic field clinics and for aftercare for children who are crippled or who are suffering from conditions which lead to crippling. Such responsibility shall be for those facilities not provided through hospitals, by private physicians or through private organizations. The division shall approve applications and arrange for orthopedic hospital care when state aid is granted for any part of the cost. This paragraph shall be administered in accordance with requirements of the federal social security act.

2. Submission to the proper federal authorities of a state plan, prepared by the medical director of the division in accordance with federal requirements, for services for crippled children. The state plan may be revised as conditions require. The division shall make reports, in such form and containing such information as the proper federal authorities require, and shall comply with all requirements made to assure the correctness and verification of such reports.

(c) Services provided to children with exceptional educational needs by special education programs under s. 115.85 (2).

(d) Supervision of the education of all children who have attained the age of 3 years, who have exceptional educational needs and who reside in any facility operated by the state or a county. Such supervision shall include:

1. The power to require the submission of reports relating to educational services provided or planned.

2. Advising the superintendent of each state or county facility.

3. Recommending to the state superintendent standards for certification of personnel whom the state superintendent determines to be involved in the education of children described in this paragraph.

(e) Making or approving arrangements for transportation to and from the child's home to the special education program, or, on school days for board, lodging and transportation to and from the child's boarding home to the special education program, if the child's parents reside outside the school district, cooperative educational service agency or county in which the child receives special education.

(4) DIVISION DUTIES. The division shall:

(a) Coordinate the development of all special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency or by state or county residential facility for children who have attained the age of 3 years and who have exceptional educational needs.

(b) Before the program receives any state funds, approve all new or expanded special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency or by a state or county residential facility for children who have attained the age of 3 years and who have exceptional educational needs.

(c) Before a discontinuance or reduction of program becomes effective, approve all plans to discontinue or reduce programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency or by a state or county residential facility for children who have attained the age of 3 years and who have exceptional educational needs.

(d) Maintain current information on all public and private special education programs within the state and make this information public.

(e) Whenever an individual's report is made under s. 115.80 (1) (a), inform the person who made the report and the child's parent of the procedure for obtaining an examination of the child by a multidisciplinary team under s. 115.80 (3).

(f) Develop a program for the preparation, recruitment and in-service training of personnel in special education and related fields, including participation, as appropriate, by institutions of higher education, state and local agencies and other public and private organizations. A plan for the development of this program, including statements of duties and responsibilities of personnel to be trained, shall be made within one year after the effective date of this act (1973). The plan shall be implemented no later than July 1, 1976.

(5) RECEIPT OF FEDERAL AID. Any federal aid which is made available for special education programs shall be granted the division for carrying out plans approved by the federal agency having supervision of the aid program.

115.78 STATE EXCEPTIONAL EDUCATIONAL NEEDS PLAN. The state superintendent shall annually issue and make public a state plan for the education of children with exceptional educational needs. The state plan shall include:

(1) The number and geographic distribution of all children who reside in this state and who have exceptional educational needs.

(2) A listing of all public and private special education programs available in this state, the number of children attending each special education program pursuant to s. 115.85 (2) or supervised under s. 115.77 (3) (d) and the state aid given to each program so attended or supervised.

(3) A statement of the personnel and facilities available through public and private special education programs to provide instruction and other services for children with exceptional educational needs.

(4) An analysis of the present distribution of responsibility for special education between the state, school districts and other governmental units.

(5) Identification of the specific goals of each type of special education program in which children are enrolled pursuant to s. 115.85 (2) or provided by a state or county facility supervised under s. 115.77 (3)(d).

(6) Standards for the screening, identification and educational program for children with exceptional educational needs.

(7) A 5-year projection of the special education needs of children who reside in this state.

(8) Recommendations for changes in the law and administrative procedures to meet the special education needs stated in the plan.

115.79 COUNCIL ON SPECIAL EDUCATION. (1) The state superintendent shall consult with the council on special education concerning:

(a) All proposed department or division policies and rules relating to the education of children with exceptional educational needs.

(b) New special education programs, expansions, reductions or terminations of existing special education programs under s. 115.77 (4) (b) and (c).

(c) The state plan required under s. 115.78.

(d) Any other matters upon which the state superintendent wishes the council's opinion.

(2) The council may report biennially to the legislature on the progress made by special education programs and planning in the

state and any other information it deems desirable.

(3) The council shall have access to reports and statistics kept by the department relating to matters concerning children with exceptional educational needs.

115.80 IDENTIFICATION OF CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS. (1) INDIVIDUAL'S REPORT. (a) A parent or a physician, nurse, social worker or administrator of a social agency who has reasonable cause to believe that a child brought to him for services has exceptional educational needs shall report the name of such child and any other information required to the school board for the district in which the child resides or to the division, except as provided in par. (b).

(b) A person who is required to be certified or licensed under s. 115.28 (7), who is employed by the school district in which a child attends public school and who has reasonable cause to believe a child has exceptional educational needs shall report such child and any other information required to the school board.

(c) Before any report is made under this subsection, the person making the report shall inform the child's parent that the report will be made.

(2) SCHOOL DISTRICT SCREENING. Pursuant to any standards adopted by the state superintendent under s. 115.78 (6), the school district shall screen each child when the child first enrolls in a public school in the school district in order to determine if the child has exceptional educational needs.

(3) MULTIDISCIPLINARY TEAM. (a) A multidisciplinary team shall be appointed by the school board and composed of 2 or more persons who are skilled in assessing exceptional educational needs that a child may have and who are skilled in programming for children with exceptional educational needs. The state superintendent shall determine the method of appointing members to the team and may require that there be additional members. The number and specialities of additional members may depend on the exceptional educational needs which the particular child is believed to have.

(b) The multidisciplinary team shall, upon written parental approval examine any child who has attained the age of 3 years and who as a result of the school district screening under sub. (2) is believed to have exceptional educational needs, is referred to it by a parent as a result of an individual's report to the school board or division under sub. (1) (a) or by a school board.

(c) The multidisciplinary team shall consult with the child's parent prior to recommending a child for a special education program.

(d) The miltidisciplinary team shall recommend a child to the school board for special education if it deems it in the best interests of the child, except that a pregnant girl shall be recommended for special education only if she has not graduated from high school, is under the age of 21 and if she and her parent consent that she be recommended for special education.

(e) If the multidisciplinary team recommends a child for special education, it shall also recommend to the school board an educational program fitted to the individual child's needs. If the educational program recommends instruction at the home, residence or other location of the child, there shall be a physician's statement in writing that the child is unable to attend school.

(4) TEACHER'S REPORT. Annually, the school district shall require a report, on forms prepared by the department, from the teacher of each child who has attained the age of 3 years and who is receiving special education under s. 115.85 (2) or in a state or county residential facility supervised under s. 115.77 (3) (d). The report shall state the teacher's assessment of the child's progress in the past year and the teacher's recommendation for further education of the child.

(5) REEXAMINATION. Each child who has attained the age of 3 years and who is receiving special education under s. 115.85 (2) or in a state or county residential facility supervised under s. 115.77 (3) (d) shall be reexamined by a multidisciplinary team at least once every 3 years.

115.81 PARENTAL APPEALS. (1) RIGHT TO APPEAL. (a) A child's parent may appeal to the school board a decision relating to special education for the child if:

1. The appeal is filed within 4 months after the school district clerk has mailed the notice of placement under sub. (2) (b).

2. The appeal is filed within 4 months after the school district clerk has mailed the notice of removal under sub. (2) (c).

3. The parent believes the local school board has placed the child in a special education program which does not satisfactorily serve the child's needs.

4. The child has not been placed in a special education program and the parent believes that such placement would benefit the child.

(b) No more than one appeal under par. (a) 3 and no more than one appeal under par. (a) 4 may be initiated in any school year.

(2) NOTICES. (a) Upon receipt of a recommendation for special education from a multidisciplinary team under s. 115.80 (3) (d), the school district clerk of the district in which the child resides shall immediately mail to the child's parent a notice of the recommendation and a brief statement of the reasons for the recommendation.

(b) When a decision is made under s. 115.85 (2) to place a child in a special education program, the school district clerk of the district in which the child resides shall immediately mail to the child's parent a notice of the decision and a brief statement of the reasons therefor.

(c) Whenever a decision is made by a school board to remove a child with exceptional educational needs from an educational program in which such child is currently enrolled, the school district clerk of the district in which the child resides shall mail to the child's parent a notice of the decision and a brief statement of the reasons therefor.

(d) The notice of placement under par. (b) or program change under par. (c) shall state that a hearing before the school board or a person appointed by it may be had if requested in accordance with procedures established by the department and set forth in the notice.

(3) CHANGE IN PROGRAM. A change in the program or status of a child with exceptional educational needs shall not be made within the period afforded the parent to request a hearing nor, if such hearing is requested, before the school board issues a decision, unless a program change is made with the written consent of the parent. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made earlier, upon order of the school board hearing the case, but without prejudice to any rights that the child or parent may have.

(4) RIGHTS AT HEARING. A parent shall have access to any reports, records, clinical evaluations or other materials upon which a decision relating to the child's educational program was wholly or partially based or which could reasonably have a bearing on the correctness of the decision. At any hearing held under this section, the parent may determine whether the hearing shall be public or private, examine and cross-examine witnesses, introduce evidence, appear in person and be represented by an advocate. The school board shall keep a full record of the hearing. A detailed summary thereof shall be given to the parent, if requested.

(5) INDEPENDENT EXAMINATION. If a child's parent believes the diagnosis or evaluation of the child as shown in the records made available to him under sub. (4) is in error, he may obtain an independent examination and evaluation of the child and have the report thereof presented as evidence in the hearing. If the parent is financially unable to afford an independent examination or evaluation, the school district shall reimburse the parent for the reasonable expenses of the examination or evaluation.

(6) HEARING AND DECISION. The school board shall hold a hearing within 60 days of appeal and shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of the close of the hearing.

If no decision is made by the school board within the 30-day period following the close of the hearing, the decision appealed from shall be deemed affirmed.

(7) APPEAL TO STATE SUPERINTENDENT. Within 30 days after the decision of the school board, the parent may appeal the decision to the state superintendent. The state superintendent shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of appeal. If no decision is made by the superintendent within the 30-day period following the close of the hearing, the decision appealed from shall be deemed affirmed.

(8) APPEAL TO COURT. Within 30 days after the decision of the state superintendent, the parent may appeal the decision to the circuit or county court of the county in which the child resides.

115.82 COMPULSORY ATTENDANCE. The provisions of s. 118.15 relating to compulsory school attendance apply during the school term to children with exceptional educational needs and may be satisfied by attendance at special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency, state or county residential facility or private special education service.

115.83 AUTHORIZATION OF SPECIAL EDUCATION PROGRAMS AND SERVICES. (1) A school board, board of control of a cooperative educational service agency or, upon authorization of the county board, a county handicapped children's education board may:

(a) Subject to approval by the division under s. 115.77 (4) (b) and (c), establish, maintain, expand, reduce or discontinue a special education program, including special physical or occupational therapy services, for children with exceptional educational needs.

(b) Employ, for a special education program, either full- or part-time certified teachers, certified coordinators of special education, certified school social workers, certified school psychologists, paraprofessionals, certified consulting teachers to work with any teacher of regular education programs who has a child with exceptional educational needs in a class and any other personnel approved by the department.

(c) Provide in-service training for any teacher who has a child with exceptional educational needs in a class and any other services approved by the department.

(2) A special education program may consist of such special education programs for children as to allow them to attend regular education programs, one or more special schools or preschools, special sections within a school or preschool, special instruction centers, special instruction at the home or residence of the child or at any other location or any other special education program approved by the state superintendent.

(3) A special education program may be supplemented by family guidance or counseling services to train other members of the child's family to assist in the child's education.

(4) A special education program may be for the school term, may include a summer program or may be for the school year.

(5) The courses, qualifications of teachers, coordinators, social workers and school psychologists and plan of organizing and maintaining special education programs and other services shall comply with requirements established by the state superintendent.

115.84 LOCAL REPORT. The school board, board of control or county handicapped children's education board maintaining special education programs or other services shall report annually to the department, and at such other times as it directs, such information as it requires. The report shall include the number of pupils instructed or provided service, their residence and the period of time each was instructed or otherwise served during the school year. Annually, each board shall submit to the department an itemized statement on oath of all receipts and disbursements on account of such special education programs or other services during the preceding school year.

115.85 SCHOOL DISTRICT. (1) RESPONSIBILITY TO MAKE PROGRAMS AVAILABLE. (a) Each school district shall ensure that appropriate special education programs are available to children with exceptional educational needs who have attained the age of 3 years and who reside in the school district.

(b) A school district may provide special education for preschool children under the age of 3 years and instruction for their parents. Such special education shall be subject to the approval of and shall comply with requirements established by the state superintendent.

(c) The school board shall submit to the division any information it requires concerning special education in state or county facilities supervised by the division under s. 115.77 (3) (u) and shall advise the superintendent of each such facility.

(2) PLACEMENT IN APPROPRIATE PROGRAM. The school board after consultation with the multidisciplinary team and after the parent has consented in writing shall place in an appropriate special education program a child who has been recommended for special education by a multidisciplinary team and who resides in the school district. The board may delegate this responsibility in such manner and to such person as it deems appropriate, including the multidisciplinary team.

(a) If the school district, the county in which the child resides or the cooperative educational service agency for the school district in which the child resides operates an appropriate special education program, the child shall be placed in such program.

(b) If an agency enumerated in par. (a) does not operate a special education program which is appropriate for the child's needs, the child shall be placed in a program operated in this state by a public agency as near as possible to the place where the child resides.

(c) If no public agency in this state operates an appropriate program the child shall be placed, with the approval of the state superintendent, in an appropriate public program in another state.

(d) To provide a special education program which is appropriate to the child's needs, the school board may, upon approval of the state superintendent and if no equivalent public program is locally available, contract with a private special education service whose governing board, faculty, student body and teachings are not chosen or determined by any religious organization or for any sectarian purpose.

(e) The school board may place a child with special educational needs in a special education program at the home, residence or other location of the child only if there is a physician's statement in writing that the child is unable to attend school, as required under s. 115.80 (3) (c).

(3) SCHOOL DISTRICT PLAN. Annually, on or before August 15, each school board shall report to the department such information as it requires, including the following:

(a) The total number of children who reside in the district and who have been placed in special education programs under s. 115.85 (2), the exceptional educational needs of each such child and the school attended or special education received by each such child. The report shall also specify the number of children with exceptional educational needs who are known to the school district and who are under the age of 3 years and the exceptional educational needs of each such child.

(b) A description of the screening process for exceptional educational needs provided under s. 115.80 (2) to each child who enters public school in the district.

(c) A description of the special education programs in which children who reside in the district have been placed under sub. (2), the number of persons attending each pursuant to sub. (2) and the qualifications of the staff of each such special education program.

(d) An evaluation, in terms of the goals identified under s. 115.76 ([illegible]), of the progress made by each special education program in which children who reside in the district are placed under sub. (2).

(e) An evaluation of the progress made by each child who resides in a facility operated by the state or a county, who has attained the age of 3 years and whose parent resides in the district and a statement of the expected duration of the child's stay in such facility.

(f) Plans for new, expanded, or reduced public school special education programs or for discontinuation of any such program or part of such program.

115.86 HANDICAPPED CHILDREN'S EDUCATION BOARD. (1) DEFINITIONS. In this section "board" means the county handicapped children's education board.

(2) ESTABLISHMENT. Any county board may determine to establish a special education program for children with exceptional educational needs, for school districts in the county. The program may provide for one or more special schools, classes, treatment or instruction centers or any other service authorized under s. 115.83 for children with one or more types of exceptional educational needs. A school district shall be included under such county program only to the extent approved by formal action of the school board of the district. When the county board determines to establish such a program, it shall create a board to be known as the "Handicapped Children's Education Board".

(3) ORGANIZATION. (a) The board shall consist of 3 or 5 persons, as determined by the county board, elected by the county board or appointed by the chairman of the county board, as the rules of the county board direct. Board members shall be electors selected from that part of the county participating in the program and shall be representative of the area the board serves. The board may include school board members, county board members and other electors. Board members shall hold office for a term of 3 years, except that the terms of office of members of the first board shall be 3 years, 2 years and one year. Board members shall receive compensation and reimbursement for mileage in an amount fixed by the county board, but not more than that of county board members.

(b) The board annually shall select one member as chairman and one as secretary. The county treasurer shall serve as board treasurer but shall not be a member of the board.

(c) The board shall appoint an advisory committee whose membership includes school district administrators representative of the area the board serves.

(4) APPLICATION. Upon authorization of the county board, application for the establishment of a program or any part thereof shall be made by the board to the division. The application shall state whether the program or part will be available in the county at large or only to certain school districts.

(5) BOARD DUTIES. The board shall have charge of all matters pertaining to the organization, equipment, operation and maintenance of such programs and may do all things necessary to perform its functions, including, without restriction because of enumeration, the authority to erect buildings subject to county board approval

and employ teachers and other personnel. The board shall prepare an annual budget which shall be subject to approval of the county board under s. 65.90 and shall include, without limitation because of enumeration, funds for the hiring of staff, the purchase of materials, supplies and equipment and the operation and maintenance of buildings or classrooms.

(6) ASSIGNMENT OF FUNCTIONS. The county board may assign by resolution the functions of the board to a cooperative educational service agency operating in the county, but if the board continues to exist, it may contract with the agency board of control or a school board of any district in the county for professional and administrative services or for any of the purposes enumerated in s. 115.83. If the board does continue to exist it remains responsible for the program.

(7) WITHDRAWAL AND DISSOLUTION. (a) The school board of any district which is included under the administration of a board may withdraw from participation in any part of the program only with the approval of the state superintendent after conference with the board and a determination by the state superintendent that such withdrawal is in the interest of the program in the county and the school district affected. Such withdrawal shall be effective only if the school board has the approval of the division to establish an equivalent part of a program. Such withdrawal shall not be effective until the end of the next full school term. The withdrawing school district shall be liable for its proportionate share of all operating costs until its withdrawal becomes effective, shall continue to be liable for its share of debt incurred while it was a participant and shall receive no share in the assets.

(b) A program established under this section may be dissolved by action of the county board, but such dissolution shall not take place until the end of the school term in which the action was taken. When a program is dissolved, assets and liabilities shall be distributed under s. 66.03 to all units which participated in the program.

(8) TRANSPORTATION. The board may promulgate a plan for the transportation at county expense of children who are participating in special education programs under this section, special education programs operated at day care centers or special education programs operated by a private organization within whose attendance area the child resides and which is situated not more than 5 miles beyond the boundaries of the area the board serves, as measured along the usually traveled route. The plan, upon approval of the state superintendent, shall govern the transportation of such children. Any such plan for transportation during the school term supersedes ss. 115.58 and 121.54 (3).

(9) AREA TAXED. The tax for the operation and maintenance of each part of a special education program and for the transportation of children under sub. (8) shall be levied against the area of the county participating in the part of the program.

(10) STATE AIDS. The board may apply for and receive the state aid under ss. 115.88, 121.135, 121.14, 121.15 and 121.58 (2) (b) for the transportation, board and lodging, treatment and instruction of children participating in programs under this section. All state aid shall be paid to the county treasurer and credited to the fund of the board.

115.87 ADMISSION, TUITION AND TRANSPORTATION. (1) A cooperative educational service agency, county handicapped children's education board or school district which operates a special education program may admit a nonresident if the program is appropriate for the child's exceptional educational needs. Refusal to admit a child does not relieve the school district in which the child resides of its responsibilities under s. 115.85 (1).

(2) The basis for enrollment of a physically disabled child in an orthopedic school shall be the child's need for orthopedic school services as determined by a multidisciplinary team.

(3) Tuition shall be charged for nonresidents admitted to special education programs in accordance with this section. For each part of a program, the tuition for a nonresident child shall be determined on the basis of costs, aids and children in such part for the preceding year by adding together the total cost of items reported under s. 115.88 (1) and the actual cost of operation and maintenance not so reported, subtracting federal, state and county aids and then dividing this amount by the number of children in average daily membership.

(4) In counties having a population of less than 500,000, if a child with exceptional educational needs resides in a school district or county which does not maintain an appropriate special education program and attends a special education program in another school district or county, tuition therefor shall be chargeable under this subsection.

(a) Annually on or before August 1, the school district clerk and the secretary of the county handicapped children's education board shall file with the clerks of the county and the city, village or town of residence of nonresident children admitted to the program of the school district or county a sworn statement of claim for tuition therefor against the county. The claim shall set forth the residence, name, age, date of entrance and number of weeks in attendance during the preceding school year of each such child, the amount of tuition to which the school district or board lays claim for each such child and the total amount of tuition due the school district or board from the county. The county clerk shall examine the claims for the purpose of determining their accuracy and legality and may call upon school, county or local officials to supply data which will verify the claims.

(b) After examining the claims, the county clerk shall notify the school district clerk or secretary of the board of the result of his examination. If corrections are necessary, the county clerk shall notify the school district clerk or secretary of the board who shall meet with the county clerk, at the expense of the school district or board to make corrections. The county clerk then shall apportion the amount of the claims, for each type of exceptional educational need, on the basis of the ratio of the equalized valuation of that portion of each municipality within the county that lies outside of the territory served by all programs for children with that exceptional educational need that are operated by school districts or pursuant to s. 115.83 to the total equalized valuation of all the territory in the county that lies outside of the territory served by all programs for children with that exceptional educational need operated by school districts or under s. 115.83 and shall certify that amount to the clerks of such municipalities.

(c) Upon receipt of the certification from the county clerk, each municipal clerk shall spread the amounts thereof upon the tax rolls for collection. When taxes are collected, such amounts shall be paid by the county treasurer to the treasurer of each school district or county handicapped children's education board to which due, subject to the priority given to high school tuition under s. 74.03 (5).

(5) In counties having a population of 500,000 or more, the school district of residence shall pay tuition charges for children with exceptional educational needs as provided in par. (a) or (b).

(a) Annually on or before August 1, the school district clerk shall file with the clerk of the school district of residence of such nonresident children who reside in school districts that lie wholly or partially in counties having a population of 500,000 or more a sworn statement of claim against the school district of residence. The claim shall set forth the name, age, date of entrance and number of weeks in attendance during the preceding school year of each such child, the amount of tuition to which the school district lays claim for each such child and the total amount of tuition due the school district of attendance from the school district of residence. After examining the claim and verifying it, the clerk of the school district of residence shall cause reimbursement to be made to the treasurer of the claimant school district as other claims are paid.

(b) Any 2 or more school districts, by written agreement of their school boards, may admit residents of the other school districts to any phase of the program for children with exceptional educational needs and waive all claims for tuition for such admittance.

(6) If a child with exceptional educational needs resides in a school district or area served by a county handicapped children's education board which maintains an appropriate special education program for such child and if the child attends a special education program in another school district or area served by another county handicapped children's education board, tuition therefor shall be charged to the child's parent unless the state superintendent and the school district administrators or county handicapped children's education boards have approved the transfer. If the state super-

intendent and school district administrators or county handicapped children's education boards approve the transfer of a child to an equivalent special education program in another school district or area served by another county handicapped children's education board for good reason to serve the best interests of the child, the child may attend such special education program and tuition therefor shall be paid by the school district or county of residence.

(7) In addition to the requirements of s. 121.54 (3), when board and lodging are not furnished to nonresident children with exceptional educational needs the school district in which the child resides or, if there is a plan of transportation under s. 115.86 (8), the county handicapped children's education board shall provide transportation.

(8) Upon the advance approval of the state superintendent, the school board of any district may place a child in a special education program outside this state in accordance with s. 115.85 (2) (c) or a special education program operated by a private, nonsectarian special education service either within or outside the state in accordance with s. 115.85 (2) (d). If the child resides in a county having a population of less than 500,000, the county of residence shall pay the tuition and transportation in accordance with the procedure established for the payment of tuition by the county under sub. (4). If the child resides in a county having a population of 500,000 or more, the school district of residence shall pay the tuition and transportation in accordance with the procedure established for the payment of tuition by the school district under sub. (5).

115.88 STATE AID. (1) PROGRAM AID. If, upon receipt of the report under s. 115.84, the state superintendent is satisfied that the special education program has been maintained during the preceding school year in accordance with law, he shall certify to the department of administration in favor of each county, cooperative educational service agency and school district maintaining such special education program a sum equal to 70% of the amount expended by the county, agency and school district during the preceding year for special books and equipment used in programs under this subchapter, salaries of personnel enumerated in s. 115.83 (1), except as provided in pars. (a) and (b), and other expenses approved by the state superintendent. The department of administration shall pay such amounts to the county, agency and school district from the appropriation under s. 20.255 (1) (d). The amount of aid paid to any county, agency or school district under this subsection shall be reduced by any amounts received by that county, cooperative educational service agency or school district under sub. (7) for the same school year.

(a) Salaries of coordinators of special education, school social workers or school psychologists who have not attained the senior level shall not be reimbursable under this subsection.

(b) Salaries of senior level school psychologists and senior level school social workers shall be reimbursed at 33-1/3% without regard to whether they are employed in a program for handicapped children. Salaries of senior level school psychologists and senior level school social workers shall be reimbursed at 50% if the school psychologist or social worker spends at least 50% of his time as a part of a multidisciplinary team under s. 115.80 (3) or working directly with or on behalf of a child who has been placed in a special education program under s. 115.85 (2) and such salaries shall be reimbursed at 70% if the school psychologist or social worker spends all of his time as a part of a multidisciplinary team under s. 115.80 (3) or working directly with or on behalf of a child who has been placed in a special education program under s. 115.85 (2). The school district, county handicapped children's education board or cooperative educational service agency shall include in the report under s. 115.84 any information required by the state superintendent relating to use of a school psychologist or school social worker.

(2) TRANSPORTATION AID. If upon receipt of the report under s. 115.84 the state superintendent is satisfied that the transportation of children with exceptional educational needs has been maintained during the preceding year in accordance with the law, he shall certify to the department of administration in favor of each county, cooperative educational service agency or school district transporting such pupils 70% of the difference between the amount expended for such transportation and the amount of aid specified in s. 121.58 (2) or (4), whichever is applicable. The department of administration shall pay such amounts to the county, agency or school district from the appropriation under s. 20.255 (1) (d). This subsection applies to any child with exceptional educational needs who requires special assistance in transportation, including any such child attending regular classes who requires special or additional transportation. This subsection shall not apply to any child with exceptional educational needs attending regular or special classes who does not require any special or additional transportation.

(3) BOARD AND LODGING AID. There shall be paid the amount expended for board and lodging and transportation between the boarding home and the special education program of nonresident children enrolled under s. 115.85 (2) in the special education program. The department shall certify the full amount to the department of administration which shall pay such amount from the appropriation under s. 20.255 (1) (d) to the school district, cooperative educational service agency, county handicapped children's education board, state agency of another state or private, nonsectarian special education service which operates the special education program while providing board, lodging and transportation.

(4) HOSPITALS AND CONVALESCENT HOME AID. The full cost of special education for children in hospitals and convalescent homes for crippled children shall be paid from the appropriation under s. 20.255 (1) (d). The supervision of such instruction shall be under the department and the school board of the school district in which the hospital or convalescent home is located. The school board of the district in which the hospital or convalescent home is located

shall submit to the department an itemized statement of all receipts and disbursements for the actual cost of such instruction and any other information it requires.

(5) ORTHOPEDIC SCHOOL AID. From the appropriation under s. 20.255 (1) (d) there shall be paid the full cost of salary and travel expenses, in amounts determined in advance by the state superintendent, to school districts, county handicapped children's education boards or cooperative educational service agencies operating an orthopedic school for services by physical therapists performed outside the employing school district.

(6) AID FOR INSTRUCTION OUTSIDE OF DISTRICT. From the appropriation under s. 20.255 (1) (d) there shall be paid the full cost of salary and travel expenses, in amounts determined in advance by the state superintendent, to school districts for providing special education outside the school district of employment.

(7) ADVANCEMENT OF AID FOR NEW OR EXPANDED PROGRAMS. Any school district, board of control of a cooperative educational service agency or county handicapped children's education board whose application under s. 115.77 (4) to establish or expand a special education program has been authorized may request, and upon a determination of need by the state superintendent, shall receive in advance, for the first year of operation:

(a) For a new program, 75% of the estimated amount of aid which will be paid under sub. (1) for the first year.

(b) For an expanded program, 75% of the difference between the estimated amount of aid which will be paid under sub. (1) for the first year and the amount of aid which the program received for the previous year under sub. (1).

115.89 NONCOMPLYING SCHOOL DISTRICT; REMEDIES. (1) If, after a public hearing in the school district, the state superintendent finds that a school district has not provided programs for children with exceptional educational needs as required by s. 115.85 (1) and (2), he shall make findings to that effect, including a finding that the school district has denied equal educational opportunities to children with exceptional educational needs.

(2) After the state superintendent has found that a school district has denied equal educational opportunities to children with exceptional educational needs he may make recommendations to the school district to remedy the denial and may require the school district to submit a remedial plan incorporating such recommendations.

(3) If, after consultation with the school board, the state superintendent finds that the plan has not incorporated his recommendations, or that its implementation has been inadequate to remedy the denial of equal educational opportunities, he shall request the attorney general to proceed against the school district for injunctive or other appropriate relief.

115.90 TEMPORARY WAIVER. Until July 1, 1976, the state superintendent may annually waive the application to any school district of such provisions of this subchapter as he deems necessary, except that application of s. 115.88 may not be waived.

SECTION 6. 118.15 (3) (a) 2 and 3 and (b) of the statutes are amended to read:

118.15 (3) (a) 2. Any child who is ~~exempted~~ excused by the school board because he is temporarily not in proper physical or mental condition to attend school or his educational program under s. 115.85 (2), but who can be expected to return to his program upon termination of his illness or condition. ~~Prior to making an exemption under this subdivision, the school board shall obtain the~~ The certificate of a reputable physician ~~in general practice~~, reputable licensed psychologist or ~~that of a~~ Christian Science practitioner living and residing in this state, who is listed in the Christian Science Journal, ~~as to~~ shall be sufficient proof of the physical or mental condition of the child and of the expectations for the child upon termination of his illness or condition. An excuse under this subdivision shall be in writing and shall state the time period for which it is valid not to exceed 30 days.

3. Any child exempted for good cause by the school board of the district in which the child resides, except that good cause may not be based upon the child's exceptional educational needs as described in s. 115.76 (3).

(b) Upon the ~~ordering by the school board of the exemption~~ of a child under par. (a) ~~2 or~~ 3 the school district clerk shall ~~file~~ mail notice of such ~~order with~~ action to the parent or guardian of the child. A parent or guardian of an exempted child may appeal the exemption to the state superintendent. Within 30 days after the decision of the state superintendent, the parent or guardian may appeal the decision to the circuit court of the county in which the school is located.

SECTION 7. 119.28 (1) of the statutes is amended to read:

119.28 (1) The board shall establish and maintain such special schools for ~~handicapped~~ children with exceptional educational needs, as defined in s. 115.76 ~~(1)~~ (3), as are required to accommodate pupils of school age desiring to attend school. The board shall prescribe the courses of study and the educational and other activities in special schools.

SECTION 8. 121.05 (1) of the statutes is amended to read:

121.05 (1) Annually on or before October 1, the school district clerk shall file with the department a report stating ~~the~~:

(a) The number of pupils enrolled ~~and the~~ on the 3rd Friday of September of the current year, including pupils enrolled concurrently in the school district and in a special education program operated by a county handicapped children's education board and attending one or more regular classes operated by the school district and including pupils enrolled in home instruction or any other school district special education program under s. 115.83;

(b) The number of teachers employed in the school district on the 3rd Friday of September of the current school year; and ~~the~~

(c) The estimated budget for the current school year.

SECTION 9. 121.135 of the statutes is created to read:

121.135 STATE AID TO COUNTY HANDICAPPED CHILDREN'S EDUCATION BOARDS. If, upon receipt of the report under s. 115.80 (3), the state superintendent is satisfied that any children enrolled and participating in a special education program provided by a county handicapped children's education board under this subchapter and not counted as pupils enrolled under s. 121.05 are receiving the substantial equivalent of an elementary or high school education from those services, he shall certify to the department of administration from the appropriation under s. 20.255 (1) (f) in favor of the county handicapped children's education board providing those services $88 per pupil enrolled. Enrollment for aid purposes shall be determined in accordance with s. 121.05. Aids payable under this subsection shall take effect with the fiscal year beginning July 1, 1973.

SECTION 10. 121.14 (1) (intro.) and (2) (b) and (c) of the statutes are amended to read:

121.14 (1) (intro.) State aid shall be paid to each school district or county handicapped children's education board operating summer classes which:

(2) (b) Annually on or before October 1, the school district clerk or chairman of the county handicapped children's education board shall file with the department a report stating the number of pupils enrolled in summer classes. In computing the number of pupils enrolled in summer classes, the total number of accredited classroom or laboratory periods in which each pupil is enrolled, as determined by multiplying the total number of periods in each day in which the pupil is enrolled by the total number of days in which enrolled, shall be divided by 720. The quotient represents the proportion of a pupil enrolled for which the school district or county handicapped children's education board shall be paid state aid.

(c) For the purpose of computing state aid, the total number of pupils enrolled in summer classes determined under par. (b) shall be added to the number of pupils enrolled in the school district as reported under s. 121.05 or 115.84 where applicable or enrolled in a program operated by a county handicapped children's education board as reported under s. 115.84. For nonresident high school pupils in summer classes, school districts shall be paid the amounts set forth in ss. 121.09 (3), 121.10 (3), 121.12 (3) and 121.13 (3). For nonresident students who are receiving the substantial equivalent of a high school education, the county handicapped

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children's education board shall be paid the amounts set forth in s. 121.135.

SECTION 11. 121.15 of the statutes is amended to read:

121.15 STATE AID FOR DRIVER EDUCATION PROGRAMS. To promote a uniformly effective driver education program among high school and vocational, technical and adult education school pupils, each school district operating high school grades, each county handicapped children's education board which provides the substantial equivalent of a high school education and each vocational, technical and adult education district shall receive $30 for each pupil of high school age who successfully completes a course in driver education approved by the department, but in no case may the state aid exceed the actual cost of instruction. If the appropriation under s. 20.255 (1) (o) is inadequate in any year to provide $30 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under ss. 121.08 to 121.13 is paid.

SECTION 12. 121.16 of the statutes is amended to read:

121.16 STATE AID TO COUNTIES. If a county maintains an institution in which children are received for care and if such institution maintains the educational facilities required to be provided by a common school district, the county shall be paid state aid under ss. ~~115.85~~ 115.88 and 121.08 to 121.13. The educational facilities in such institutions shall be under the supervision of the department and the ~~coordinator of the cooperative educational service agency~~ school district in which the institution is located.

SECTION 13. 121.54 (3) of the statutes is amended to read:

121.54 (3) (title) TRANSPORTATION FOR CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS. Every school board shall provide transportation for ~~handicapped~~ children with exceptional educational needs, as defined in s. 115.76 ~~(1)~~ (3), to any public or private elementary or high school, to the Wisconsin school for the visually handicapped or the Wisconsin school for the deaf or to any special educational program for ~~handicapped~~ children with exceptional educational needs sponsored by a state tax-supported institution of higher education, regardless of distance, if the request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this subsection.

SECTION 14. 121.54 (4) of the statutes is renumbered 121.54 (4) (a).

SECTION 15. 121.54 (4) (b) of the statutes is created to read:

121.54 (4) (b) A school board, a county handicapped children's education board or a cooperative educational service

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agency may provide transportation regardless of distance for children with exceptional educational needs who attend a summer special education program under s. 115.83 (4), if a request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this paragraph.

SECTION 16. 121.58 (2) (b) and (3) of the statutes are amended to read:

121.58 (2) (b) State aid for approved transportation under s. 121.54 (3) shall be paid on the same basis as it is paid for transportation of ~~nonhandicapped~~ children who do not have exceptional educational needs, except that state aid shall be paid for such approved transportation of less than 2 miles at the rate of $24 per school year per pupil. Such state aid shall be supplemented by the state aid under s. ~~115.85~~ 115.88 in an amount not to exceed the full cost.

(3) STATE AID FOR BOARD AND LODGING. A school district which provides board and lodging or housing under s. 121.57 (2) in lieu of transportation shall be paid state aid for such board and lodging or housing at the rate of not more than $6 per week of 5 days for each pupil so boarded and lodged or housed, but not to exceed 60% of the cost. For ~~handicapped~~ children with exceptional educational needs such state aid shall be supplemented by the state aid under s. ~~115.85~~ 115.88 in an amount not to exceed the full cost of such board and lodging.

SECTION 17. 121.58 (4) of the statutes is renumbered 121.58 (4) (a).

SECTION 18. 121.58 (4) (b) of the statutes is created to read:

121.58 (4) (b) State aid for approved transportation under s. 121.54 (4) (b) shall be paid on the same basis as it is paid for children who do not have exceptional educational needs, except that state aid shall be paid for such approved transportation of less than 2 miles at the rate of $4 per pupil. Such state aid shall be supplemented by state aid under s. 115.88 (2).

SECTION 19. 121.79 (1) (c) of the statutes is amended to read:

121.79 (1) (c) For ~~mentally handicapped children, including mentally retarded, emotionally disturbed and epileptic children~~ a child with exceptional educational needs as described under s. 115.76 (3), in foster homes, from the appropriation under s. 20.255 (1) (fb).

SECTION 20. CROSS REFERENCE. (1) Wherever the reference "115.79 to 115.85" appears in section 119.04 of the statutes, the reference "115.79 to 115.90" is substituted.

(2) Wherever the reference "115.84" appears in section 20.255 (1) (e) of the statutes, the reference "115.88" is substituted.

SECTION 21. COUNCIL ON SPECIAL EDUCATION; INITIAL TERMS. Of the members first appointed to the council on special education under section 15.377 (4) of the statutes as created by this act, 5 shall be appointed for terms of one year, 5 for terms of 2 years and 5 for terms of 3 years. Successors shall be appointed in accordance with section 15.377 (4) of the statutes.

SECTION 22. PRIVATE CONTRACTING; COURT TEST. Upon enactment of this section, the attorney general shall promptly commence an action seeking a declaratory judgment as to whether the constitution permits the school district to contract with private, nonsectarian special educational services as provided in section 115.85 (2) (d) of the statutes as created by this act. The attorney general shall petition for leave to commence the action as an original action before the Wisconsin supreme court. If the petition is denied, he shall commence the action in the circuit court for Dane County.

SECTION 23. APPROPRIATION INCREASES. (1) The appropriation under section 20.255 (1) (a) of the statutes, as affected by the laws of 1973, is increased by $9,100 for fiscal year 1973-74 and by $10,400 for fiscal year 1974-75 to provide an additional staff position in the state aids and finance division of the department of public instruction and by $700 for fiscal year 1973-74 and by $700 for fiscal year 1974-75 for expenses of the council on special education.

(2) The appropriation under section 20.255 (1) (e) of the statutes, as affected by the laws of 1973, is increased by $247,100 for fiscal year 1974-75 to fund homebound instruction under this act.

(3) The appropriation under section 20.255 (1) (f) of the statutes, as affected by the laws of 1973, is increased $167,000 for fiscal year 1973-74 and by $174,900 for fiscal year 1974-75 to provide funds for general aids for county programs at $165,400 in 1973-74 and $172,900 in 1974-75 and summer program aids at $1,600 in 1973-74 and $2,000 in 1974-75.

(4) The appropriation under section 20.255 (1) (g) of the statutes, as affected by the laws of 1973, is increased by $1,100 for fiscal year 1973-74 and by $1,500 for fiscal year 1974-75 to fund driver education aids under this act.

SECTION 23m. RECONCILIATIONS. (1) If the 1973-75 biennial budget act contains a school district cost limitation which limits the budgeted per pupil shared cost increase for each school district for fiscal year 1973-74 or calendar year 1974, such shared cost limitation shall be computed exclusive of the cost of any new or expanded special education programs under this act.

(2) If the 1973-75 biennial budget act contains any provisions in conflict with the provisions of this act, the provisions of this

act shall supersede the conflicting provisions of the budget act.

SECTION 24. EFFECTIVE DATE. This act shall take effect July 1, 1973, or the day after its publication, whichever is later, and shall first apply to aids paid for the 1973-74 school year.

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[From the St. Paul Pioneer, Oct. 22, 1973]

Handicapped Grant Backed

By GARY DAWSON
Staff Writer

Educators, legislators and parents Friday testified in support of proposed federal legislation which would reimburse states for 75 per cent of the extra cost of educating handicapped children.

The testimony was given before a U.S. Senate subcommittee hearing chaired by Sen. Walter Mondale, D-Minn., at the state Capitol.

The legislation also would require states to provide a "free appropriate public education" for all handicapped children by 1976.

Minnesota already has a law on the books requiring that school districts provide services to all handicapped students, including the trainable mentally retarded.

In an opening statement, Mondale said, "There is no question that it is more expensive to meet the educational needs of a child who is blind, or deaf, or mentally retarded, or who has learning problems, than to meet the needs of a child without these problems."

He said studies show that the extra cost per child ranges from $400 to $800 annually.

Mondale termed the federal commitment to special education "quite insignificant." He said states are currently spending $3.5 billion on special education and the federal government only $250 million.

State Sen. Jerome Hughes, DFL-Maplewood, Senate Education Committee chairman, pointed out that the legislature increased its special education appropriation for the 1973-75 biennium from $40 million to $53.4 million, but that not all handicapped children are being served. He said he estimates that 70 to 75 per cent of the state's 100,000 handicapped children are being served.

Hughes said there is a need to provide physical therapy and occupational training for the severely handicapped, vocational training at the secondary level and for early identification and pre-school services for children.

"We are prepared in Minnesota to use a federal contribution to the fullest in a most efficient manner," Hughes said.

But Rep. Robert Bell, R-Roseville, minority member of the state House of Representatives Education Committee, said he and others are "suspicious" of any federal effort to inject massive categorical funding into education.

"I can appreciate the fact that many other states have not lived up to the high standards set by Minnesota, and I am sure that it is a federal responsibility to some way put a carrot on a stick in front of these other states." Bell said.

Bell said federal categorical welfare aids have created a welfare "mess" and are part of the reason for high federal income taxes.

Gov. Wendell Anderson, however, said he enthusiastically supports the legislation, stating that Minnesota might receive more than $47 million annually under the bill.

"Sen. Mondale, I've heard you say a number of times that the Congress authorizes dreams and appropriates peanuts in the human programs area." Anderson said.

"Minnesota does not need an empty authorization for federal assistance for the education of the handicapped."

Mondale said he wants the bill to focus on rural school districts as well as urban ones.

"We're always trying to figure out how to provide services in Harlem — Wadena is different," Mondale said.

EDUCATION FOR ALL HANDICAPPED CHILDREN, 1973–74

MONDAY, MARCH 18, 1974

U.S. Senate,
Subcommittee on the Handicapped,
of the Committee on Labor and Public Welfare,
Harrisburg, Pa.

The subcommittee met, pursuant to notice, at 10:20 a.m., in P.C.U. hearing room No. 1, North Office Building, Senator Richard S. Schweiker of Pennsylvania, presiding pro tempore.

Present: Senator Schweiker.

Committee staff present: Patria Forsythe, Lisa Walker, and John Hunnicut, professional staff members.

Senator Schweiker. The U.S. Subcommittee on the Handicapped will please come to order. First I would like to apologize to the witnesses for my delay but unfortunately our commuter plane was late this morning. I'm sorry for my time lapse and I appreciate your perseverance. I'd like to make a brief statement before we hear from our distinguished panel of witnesses.

I am pleased to be able to chair this hearing of the Senate Subcommittee on the Handicapped. This hearing is one of a series of hearings the subcommittee has been holding on S. 6, a bill introduced by Senator Harrison A. Williams, chairman of the Senate Committee on Labor and Public Welfare, Senator Jennings Randolph, chairman of this subcommittee, myself, and other subcommittee members, to provide financial assistance to States for improved educational services for handicapped children.

This hearing will focus on the implementation of the consent decrees in which a Pennsylvania court ordered the Commonwealth of Pennsylvania to provide education and full due process to all mentally retarded children. The subcommittee wants to become more familiar with the State's experience in implementing the decrees and also to identify the problems which have been encountered. Equally important for this subcommittee is the opportunity to hear from the parents and citizen organizations whose evaluation of the effort thus far is essential. Their comments and recommendations will help determine how this subcommittee will act to reinforce its commitment to provide every handicapped child the opportunity for quality education.

Today's hearing will help the subcommittee when it takes final action on S.6. I am confident that this bill can provide the basis for this Nation to meet its responsibility to provide every handicapped child with the education to which he or she is entitled. It is the purpose of the legislation to insure that all handicapped children have available to them, not later than 1976, a free appropriate public education, to insure that the rights of handicapped children and their parents or guardian are protected, to relieve the fiscal burden placed upon the States and localities when they provide for the education of all handicapped children, and to assess the effectiveness of efforts to educate handicapped children. I personally am firmly committed to these goals.

I am privileged to not only serve on this subcommittee but also on the Appropriations Subcommittee which funds education programs for the handicapped. Thus, I am in a unique position to participate in the full process of review, development, and funding of programs of education for the handicapped which are so vital in seeing that no handicapped child will be excluded or forced to wait for his share of America's opportunities.

I look forward to this hearing to hear from the people who work in this area, to receive their comments and recommendations, to learn of their successes and disappointments, and to identify the problems we still face.

And now I'd like to call as our leadoff witness Mr. John C. Pittenger, secretary of education for the Commonwealth of Pennsylvania. Secretary Pittenger, I'd like to have you introduce your associates for the record if you will.

Mr. PITTENGER. Thank you very much, Senator Schweiker. On my immediate left is Mr. Donald Carroll, Commissioner of Basic Education for the Commonwealth of Pennsylvania. On my right, Mr. William Ohrtman, Chief of the Division of Special Education.

Senator SCHWEIKER. All right, Mr. Pittenger, you may proceed.

STATEMENT OF JOHN C. PITTENGER, SECRETARY OF EDUCATION, COMMONWEALTH OF PENNSYLVANIA, ACCOMPANIED BY DONALD M. CARROLL, JR., DEPUTY SECRETARY AND COMMISSIONER OF BASIC EDUCATION, AND WILLIAM OHRTMAN, CHIEF, DIVISION OF SPECIAL EDUCATION

Mr. PITTENGER. Thank you very much, sir. Both Mr. Carroll and I have prepared written remarks which we have submitted to your staff. I thought that rather than read those remarks, which is not perhaps the most interesting way of proceeding, I would say a word or two about the Pennsylvania Association of Retarded Citizens (PARC) case and about how the Shapp administration came to make the decisions which it did in that case, and to raise a couple of policy issues which concern me as Secretary of Education and which I think the Congress will have to be concerned about as it proceeds in this field.

Let me begin by saying how delighted we are that you have come here and how much we appreciate your concern for these problems. Pennsylvania is, I guess, a pioneer in this field and we probably have explored this problem more fully than almost any other State. We have people coming to Pennsylvania from all over the country to find out, as you are finding out today, about our experience in the PARC case. We stand to benefit to a great extent from any possible Federal intervention in this field because what we've done up until now we've done largely, not wholly, but largely on our own. We think this is an area where there is a Federal responsibility and we're delighted that you and your colleagues are taking steps in that direction.

I had not been in this position more than a couple of weeks in early 1972, before I became intimately acquainted with the *PARC* case, which, as you know, was brought by the Pennsylvania Association for Retarded Children against the Commonwealth of Pennsylvania alleging that under our constitution and statutes we were not then making available to retarded children an appropriate public education. This administration, rather than fighting that contention, took a look at the facts and concluded that indeed it was not possible to say that in fact we were providing appropriate education. Governor Shapp then asked me and the Attorney General to work with PARC and with the Federal District Court in Philadelphia in developing an appropriate Consent Decree. That was done and the decree was signed, as I recall, sometime in the spring of 1972, or it may have been the summer.

Since then we've been deeply involved in the business of trying to carry out that decree. I want briefly to identify three steps that are involved, because this is what will have to happen in other States if they're to go the route that we've gone. First of all you have to identify the children themselves. I think Mr. Carroll, Mr. Ohrtman and others of the panel will probably tell you in more detail later this morning about how that has been done. There are a number of mechanisms for it and they include, for example, a search of the rolls of all of our State institutions. There were retarded children in those institutions who had educational problems that were not being met. It involved some door-to-door surveys. We picked out three counties—one highly urban area, one suburban, and one very rural—and went door-to-door in an attempt to find out what sort of an incidence of children there might be in each of those areas who were perhaps totally outside the public school system or the welfare system, or any other system. And indeed we found such people.

We engaged in extensive campaigns of advertisement in an attempt to reach the parents of these children and make known to them the rights which were theirs under the *PARC* decision. So the first step in all this is to find the kids.

The second step is to test and interview them in order to make appropriate decisions about the kinds of programs for which they can benefit. Here we've had an experience that I think will be helpful to the Senate. Included in the decree was a requirement for a due process hearing in the case of any parent or guardian who was not satisfied that the local school district had initially made the right decision about what was to be considered an appropriate program. I think it's fair to say that there was a good deal of apprehension in the field about the consequences of including this provision in the decree. Our experience to date, however, has been a good one. I think we had something like 130 hearings and perhaps another 20 underway, but the volume of hearings has not overwhelmed us. It has been possible, I think, to satisfy parents and guardians that in fact correct decisions had been made. This was accomplished without placing an impossible administrative burden on various parts of the public school system.

The third and perhaps the most difficult part of the process is to create educational programs that will in fact meet the needs of these children. Some of the children we are talking about are profoundly retarded children who were either totally outside any system whatsoever, or were in State institutions receiving what we all conceive to be inadequate educational programs. This is a process not yet complete. We think we've made a lot of progress but we know we have a long way to go. I'm sure that others will tell you later today what some of the continuing problems are. For example, in the beginning there was a very inadequate number of teachers in our system who were in a position to deal with the profoundly retarded child simply because most of the children who were in the public schools before this were less severely retarded. This raised a different range of problems. And so we've had to engage in some crash programs with the help of colleges and universities in the Commonwealth to begin training people to deal with this much broader range of problems. I think we've made some progress but I'd be kidding you if I said we solved all of them.

I want, Senator Schweiker, to spend a couple of minutes talking about some policy issues that I think we all need to look at as we move along here. I then ask you and your staff to question Mr. Carroll, Mr. Ohrtman and myself.

ASSISTANCE FOR STATE EFFORT

One concerns an issue of policy that you and I have discussed in another context. I have a very serious concern that Pennsylvania not be penalized for having been a pioneer in this area. You will recall that in the Higher Education Amendments of 1972 there was a small provision made for encouraging States to get into scholarship programs. It is a provision that handicaps Pennsylvania because it only provides Federal funds to people who increase their expenditures on scholarship programs after the passage of the act. Pennsylvania had in 1972 a scholarship program which was already a relatively mature program. It had begun in 1965 and it won't be increased except as inflation makes it do so, and so we are not in a position to take advantage of those Federal funds. I am very much concerned that as this legislation is developed in the House and in the Senate not say to States like Pennsylvania that you can't use any of this money to meet the responsibilities that you've already incurred. To do that is to penalize us for having already gotten deeply involved in programs which in other States may be quite minimal at this point in time. That's one of my concerns.

DEFINITION OF HANDICAPPED CHILDREN

A second problem that we need to look at is a definitional problem. The *PARC* case applied in a strict legal sense only to mentally retarded children. We are perfectly clear in our mind, however, that the logic of that decision goes beyond retarded children and should include children with handicaps of various sorts. We are in the process now of developing regulations to put before our own State Board of Education which would in fact extend those privileges and those processes to all handicapped children.

There is a borderline area here which we need to worry about and that's something called learning disabilities. Some kinds of handicaps—blindness, deafness, psychiological defects of various kinds—are relatively easy to discern and to deal with. In these situations you know what the dimensions of the problem are. When you talk about learning disabilities it's very hard to know what you're talking about in terms of the number of youngsters who are involved. There are, for example, people in the field who would argue that any kid who is performing more than a certain degree below grade level is *ipso facto* learning disabled. It seems to me there's a circularity in that argument that we need to avoid and I don't really have a solution to propose. I only mean to suggest to you and your staff that there are some serious definitional problems when you come to deal with some of these problems.

EXCESS COST

The third point I want to make, and then I'll keep quiet for a while, is that we need to spend a great deal of time working out the definition of excess costs. I like the excess cost approach. I think it's a good one and I would congratulate you and Senator Williams and others in using that basic approach in the bill. There are, however, horrendous difficulties in knowing precisely what excess costs are. For example, some figures from the various States were inserted in the *Congressional Record* back in January by Senator Williams that show the excess costs of Pennsylvania as being $837. I'm not clear from the chart what year that is supposed to be, but that figure is clearly low in terms of our current figures which were about $1,100 last year and somewhat more than that this year.

Senator SCHWEIKER. My staff tells me that those figures placed in the record were for fiscal year 1972.

Mr. PITTENGER. Well, that might account for the difference.

Senator SCHWEIKER. What was your figure again?

Mr. PITTENGER. We think for last year just under $1,100, about $1,070. For the current year clearly more than that. Our figures are not final yet and I'm going to ask my staff to work with your staff as we develop these current figures because you'll want to know what they are. But you do get into tough problems for example when you talk about excess costs. Are you talking only about instructional costs, or are you talking about ancillary things like transportation? We find that the transportation of handicapped children is a very substantial part of the cost and we would not want to see that excluded.

Senator SCHWEIKER. Well, let me just say that under the bill that we're sponsoring, the Federal Government would pay 75 percent of the excess costs per child including transportation and the ancillary costs that you were referring to.

Mr. PITTENGER. We appreciate that. We think that that's crucial because those ancillary costs are an important part of the bill and have been one of the things that has pushed our costs up quite high.

I would suggest at this point, Senator, that I not say anything more directly. There are many other people here with far more expertise than I have in this field, but I, Mr. Carroll and Dr.

Ohrtman would be pleased to respond to questions which you might have.

Senator **Schweiker**. I certainly do have a few questions. As I mentioned, this State is really the leading State in the country in this area and we're groping for expertise and experience to base Federal legislation on.

On the matter of cost, I might ask how you folks define your Federal excess costs and how the State approaches the same problem?

Mr. **Pittenger**. Well, I'll ask Mr. Ohrtman to answer that and just preface his reply by saying, so that it's helpful to your staff and you, that in Pennsylvania some programs for handicapped children are run by local school districts and others are run by what we call intermediate units. You probably know what they are but I'm not sure everybody else does. An intermediate unit in Pennsylvania is essentially a regional grouping of school districts. There are 29 of them in the whole State. They are an out-growth of the old county superintendency, and an intermediate unit can be only one school district. Philadelphia is both a school district and an intermediate unit. It can have as many as 25 or 35 school districts in it. The intermediate units have a very heavy responsibility for running special education programs for those school districts that don't run them themselves. I wanted this information to preface what Mr. Ohrtman is going to say.

Mr. **Ohrtman**. Excess costs are variable across school districts and intermediate units. The excess costs in school districts are defined as instructional costs. Primarily the largest amount in there is the instructional cost of the teaching or professional staff. It is allowable to prorate administrative costs for the principals and related areas here. It does not include, however, in the administrative costs such things as the Chief School Administrator or the Assistant Superintendent, so these are persons dealing directly with instruction. It allows for the costs of instructional materials. It allows for the administrative costs but only in the sense of allowing for the actual material used in that. It allows for the maintenance of plant only to the point of supplies used in operating the maintenance of the plant but is not charged off as a total cost that way. Of course, then all the fixed charges to support the personnel and so forth are there.

The intermediate unit is allowed to increase their total cost of operation and instruction to include what are identified as overhead charges. They are by law charged with operating programs and therefore that means they must have facilities, they must have equipment in those facilities. These costs are allowable at the intermediate unit. We estimate that the overhead charges difference for intermediate units and school districts might amount to a 20 percent difference in the costs between a district and an intermediate unit.

We have prepared some data by going to the 1973-74 budget. We have moved in the last 2 years to requiring districts and intermediate units to calculate costs for children by the area of handicap as well as calculating them by charges in intermediate units and charges in districts.

One of the difficult problems that you have in comparing data such as Secretary Pittenger did is that the requests of the data to be supplied are not based on common factors. You therefore get very disparate data from State to State. If we could identify a set of allowable costs from the Congress in the legislation, we then could very quickly and readily compare the costs across states and thus have more meaningful information.

Another problem in the legislation as you've written it for us is the average daily attendance versus average daily membership. The fact that a teacher has 15 children and 13 are attending, if that's a penalty, you still must maintain your classroom. You do have those kinds of things with certain kinds of reduction in program costs. You have an average daily membership where if you take a program of speech correction or clinical speech approach, the teacher may have 35 or 40 persons and this could be reduced then to 2 or 3 ADM and the cost would be very high.

Senator Schweiker. Do you have any recommendations in terms of what the Federal Government ought to define as allowable or could you maybe submit later on for the record not, so much what you've done but, what you feel in view of your experience would be a good basis for Federal law or Federal definition. If you aren't prepared strictly to come up with then maybe you could have something later on for the record.

Mr. Ohrtman. We could submit that for the record.

Senator Schweiker. Could we have for the record also your data from local districts that you mentioned a moment ago?

Mr. Ohrtman. I see no reason why not. We can provide that.

Senator Schweiker. We would appreciate that.

[The material referred to was not available to the committee for inclusion in the record at the time of printing.]

OBTAINING INFORMATION

Senator Schweiker. Mr. Pittenger, as you mentioned in your formal statement and also in your formal statement to us, when you went about the task of developing your plan to find pupils, was there any problem with gathering information? Was any source or any individual family reluctant in any way to provide it on the basis that it was an invasion of privacy?

Mr. Pittenger. There were no problems of this kind that were brought to my attention, but that doesn't mean that there weren't such problems. I would ask Don or Bill: do either of you recall any cases in which there was an unwillingness on the part of a family or school district or anybody to divulge informaton?

Mr. Ohrtman. Not in that area, more so with agencies than actually with the individuals.

Mr. Pittenger. What does that mean?

Mr. Ohrtman. Well, for instance the Mental Health/Mental Retardation persons were asking for information from school records. The school records were furnished reluctantly as again an invasion of open data and on the grounds of not knowing who was receiving the data and how it would be used.

Senator Schweiker. Mr. Pittenger, I'll address these to you and any of your associates you want to designate to answer this go right ahead. The consent decree provided educational service only for mental retardation. Has the State extended the right to education to other disabilities or how do you presently relate disabilities to the problems that we focused on here earlier in mental retardation?

Mr. PITTENGER. I think I indicated earlier that we see no basis in law or morality for making a distinction between mentally retarded children and children suffering from other kinds of disabilities. We are in the process of preparing and putting before the State Board of Education a regulation which would in fact then expand to youngsters with other kinds of handicaps the protections and so on that have been afforded to mentally retarded children by means of the PARC decision.

Senator SCHWEIKER. Could you give us a figure, and if you don't have it available supply it for the record, showing what percentage of the total handicapped children's population you serve by your yardstick measurement?

Mr. PITTENGER. Bill, do you have that?

Mr. OHRTMAN. I'd rather furnish that to you later. We again have definitional problems of when an individual is served and when not. Particularly with the advent of mainstreaming of how many children in regular grades are being served through supportative services and so forth. But we do have at this time an estimated 208,000 children totally in Pennsylvania who are being served. This includes the talented and gifted also.

Senator SCHWEIKER. These are what you might say are special educational hangups of some type.

Mr. OHRTMAN. Yes, sir.

Mr. PITTENGER. I might add, Senator, that not all of them are in full-time programs. I think we're including in that figure, are we not Bill, youngsters who are benefiting say from the services of traveling speech therapists. But the child in question may spend only a half an hour a week with that person and may spend the rest of his or her time in relatively normal programs. So I wouldn't want you to think that that means there are 208,000 children who are in full-time special education programs.

COST OF SERVICES

Senator SCHWEIKER. Can you give us a figure of the cost to the Commonwealth for the Consent Decree in terms of your costs now and costs to extend services to all?

Mr. PITTENGER. Well, it's awfully hard. My prepared testimony suggests at the bottom of page 6 and top of page 7, and I quote now, "The right to education program has so far increased special educational instructional expenses for Pennsylvania by approximately $16 million for the current year." I would want you to take that figure with a grain of salt, frankly. It's easy enough to compare our expenses from one year to the next but it's hard to know how much of that increase was actually caused by the *PARC* decision and how much of it would have taken place anyway. You've got a number of factors at work, the number of kids, inflation, change in concepts about what is an appropriate educational program for children with different problems. That's a guess and a rather broad one and I wouldn't want you to do nationwide extrapolations from that without realizing that it's not a hard figure.

Senator SCHWEIKER. Mr. Pittenger, have you been able to get a breakdown on specific costs by types of handicapping conditions. Have you any figures that might help us here?

Mr. PITTENGER. We do have some figures that we'll provide you with, although I think I may want to give them in a little more sophisticated form then I have them right here in front of me. But I've got the thing broken down by educable mentally retarded, trainable mentally retarded—those are older categories that in one sense are out of date—severe and profoundly mentally retarded children who were outside the system totally before, emotionally disturbed, physically handicapped, brain injured, hearing impaired, vision impaired, speech and language impaired, and the costs both on a district and on an intermediate unit basis because as I indicated They do differ somewhat. There are profound differences in those costs.

Senator SCHWEIKER. Mr. Pittenger, you describe in your formal remarks about the first step toward identification of the problem and I just wondered whether you had any figures or estimates as to how much that identification process costs. Can you give us any enlightenment on the size of that problem for the State and the costs involved in getting the problem identified?

Mr. PITTENGER. Mr. Carroll says he thinks over $1 million went into that process. And I guess, Don, that the major expense there was the door-to-door kinds of things in Pittsburgh, Montgomery, and up in IU-16, is that right?

Mr. CARROLL. Yes.

COUNTY TYPES AND CHARACTERISTICS

Mr. PITTENGER. Those were the major costs.

Senator SCHWEIKER. One thing I might ask too, since you did identify three specific different kinds of counties, including my own home county is what different characteristics did you note between say urban, suburban, and rural in terms of the problem? Was it much of a similar problem regardless of the area? What came out of your cross-sectional study of different population groupings for handicapped problems?

Mr. OHRTMAN. I can't answer your questions specifically, but one of the interesting things was particularly in the rural area. Initially they got a jump and followed the idea of identification and location of the children and they used all of the community resources. They got a different kind of response when they went door-to-door. One of the things that occurred was that the agencies had seen children that they thought might be mentally retarded and who would probably encounter difficulties when they entered school and moved through. When the parents were asked whether their children were handicapped, of course not recognizing that they would meet difficulties within the school system and similarities sometimes amongst children in the family they didn't give the same answer.

There was not as great a number of children, however, identified through the door-to-door census as there was by the call for children otherwise. We did get a large variety of children also who were not necessarily in the Consent Decree for mentally retarded and those children became identified to us as handicapped children.

Mr. CARROLL. Excuse me, Senator Schweiker. I want to say I was somewhat surprised that in looking at what I would have imagined to have been a smaller number of children in rural areas we found more than we had expected there. I might indicate that something operates in rural areas that makes parents not want to admit to a problem of this type. And while it's hard to generalize we were startled at the relatively larger number there.

EVALUATION OF PROGRAM ADEQUACY

Senator **Schweiker.** Do you have any way at this point in time in terms of evaluating the adequacy of your program?

Mr. **Pittenger.** I think the evaluations that we have now, and I'll ask Don and Bill to supplement what I'm saying, are impressionistic rather than scientific. Many of these classes have only been going since this past September and so it's not possible to make any really intelligent statements about whether a certain group of retarded children have progressed more rapidly then in the past or in some comparison to some other group.

I do have some impressions and these impressions are based in my own case on having visited a number of programs in various counties around the State. I think offhand of Montgomery, Delaware, and Philadelphia, a part of the State that you know well, where I have visited in the last year. One of the impressions I have is of growing optimism on the part of professional staff that the kinds of problems we had thought until now had no solutions may in fact have some solutions. I feel this point is important to emphasize first.

There is a danger in all this, however, and that is to lead parents and the community in general to expect more than they have a right to expect. And so you've got to balance some cautious optimism against the danger of exciting people's hopes unrealistically.

One of the items that ought to enter into any evaluation, I don't quite know how you can do it though, is the effect on the parents themselves. Because to be the parent of a profoundly retarded child is a terribly difficult experience, as I'm sure you can appreciate. I remember talking, for example, with a woman down in Delaware County. She told me that the fact that there was a program going on down there meant that for the first time in something like 11 years she and her husband had been able to go out to a meal together in the evening. Until that time one or the other of them had had to stay home with this child all the time. I don't know how you'd measure that and there's no way that that kind of thing is going to show up in even the most rigorous scientific evaluation. That's surely a contribution to human happiness in these lives that the Senate and others ought not to overlook in this kind of program.

Don, do you or Bill want to comment more accurately than I have about the kinds of evaluation. Am I right that we're too early?

Mr. **Carroll.** Yes. I think we're severely lacking in a good objective evaluation. That seems to me like phase two of this. We first had to find the kids, provide them with appropriate education and training and deal with the whole question of how you staff for such an effort. We have engaged in what we call process evaluation. We have check lists, we have teams that go in and look at classes and apply those check lists. That's helpful to just get a feel for what's going on. But in terms of what's actually happening to kids in the end product, which I think is the important thing, we haven't moved very far along that line and it's an area that in the next year we'll have to deal with directly.

Mr. PITTENGER. Bill, do you have anything to add?

Mr. OHRTMAN. Yes. In S. 6 it does talk about individual diagnosis, individual prescriptions and so forth, and I believe in the Consent Decree with the document known as Compet, that is the Commonwealth's plan for education and training. The State of Pennsylvania again has taken leadership in arriving at a way in which the behavioral objectives or the instructional objectives are outlined in detail for the progress of children. That is a system of not a standardized measurement, but a criterion reference in relation to each child: how well did he do and how well do you want him to do in regard to the skill that you're trying to build or the task that you're trying to have take place through the instruction. This is printed and is now supposed to be followed as a measure of how well we're going in compliance with the Consent Decree.

That is a mammoth job. It is one again where the Federal legislation can assist not only the State of Pennsylvania but the entire Nation in solving the problem of how well are we doing for the amount of resources that we're placing in a particular program for an individual child.

PERSONNEL ADEQUACY

Senator SCHWEIKER. Mr. Pittenger, are you reasonably satisfied in your present approach that you now have adequate personnel in both numbers and training that are providing the programs in the schools?

Mr. PITTENGER. Senator, are you talking about administrative personnel or are you talking about actual professional people in the field?

Senator SCHWEIKER. Professional.

Mr. PITTENGER. I guess the answer is no, because although we're a little better off than we were a couple of years ago when we plunged into all of this, we've had to expand the various training programs in our colleges and universities very rapidly. And also ask them to undertake some summer school programs and that kind of thing for people who were already in the field. As I think I indicated earlier, the kinds of problems that you encounter when you're working with children in one of our State hospitals, the profoundly retarded children, are just of a different magnitude than the kinds of problems you might have had with a slightly retarded child who in many ways can do things that other children do. We've made some progress but not nearly enough.

Senator SCHWEIKER. Well I want to say I think we've pretty well run out of questions for now. We want to thank you, Mr. Pittenger, very much and your panel for coming here today.

Mr. PITTENGER. Thank you. And I think you will find that Mr. Carroll and Mr. Ohrtman will be here and take part in other panels, but I would ask to be excused at this time.

SENATOR SCHWEIKER. Thank you.

[The prepared statement of Mr. Pittenger follows:]

PREPARED STATEMENT BY JOHN C. PITTENGER, SECRETARY OF EDUCATION, DEPARTMENT OF EDUCATION, COMMONWEALTH OF PENNSYLVANIA

Mr. PITTENGER. Mr. Chairman and members of the Committee. I am John C. Pittenger, Secretary of Education, Pennsylvania Department of Education. Thank you for the opportunity to appear before you.

Mr. Chairman, the legislation now before this committee, Senate Bill 6, extension of Education for All Handicapped Children's Act, is important to the Commonwealth of Pennsylvania. This legislation and its predecessor, Title VI of the Elementary and Secondary Education Act of 1965—have profound financial implications for the funding of special education programs in general for Pennsylvania. Even more, the bill represents renewed Federal commitment to equal educational opportunity for the handicapped child—a priority of the Commonwealth of Pennsylvania.

For a number of years now the Commonwealth of Pennsylvania has been dedicated to educational programs for exceptional children. The state contribution, which has more than tripled in the last decade, is now close to 100 million dollars, and the local effort approaches 50 million dollars.

The one program I do wish to discuss in some detail—and the one which I believe may be of greatest interest to you in your deliberations—is the consent agreement between the Commonwealth of Pennsylvania and the Pennsylvania Association for Retarded Children, commonly known as the PARC decision. I should point out at the beginning that this decision dealt with only one type of handicap—mental retardation. The legislation before you is far broader in scope. In all other respects, however, the PARC decision is immediately pertinent to this legislation.

I would also like to point out that the Commonwealth of Pennsylvania consistently supported the essentials of the PARC case and entered voluntarily into most of the elements contained in the final consent agreement.

On May 5, 1972, the District Court for Eastern Pennsylvania issued the final decision relating to the case of Pennsylvania Association for Retarded Children versus the Commonwealth of Pennsylvania. The court found that interpretations and applications of sections of the Pennsylvania Public School Code of 1949 effectively denied handicapped children equal access to public education and training programs. More specifically, certain practices in the admission and/or retention of students have the result of excluding mentally retarded children from the Commonwealth's responsibility to provide a free public education for all citizens.

In the *PARC* case, the court found—"That all mentally retarded persons are capable of benefiting from a program of education and training." (para. 4, Amended Consent Agreement)

and that—"It is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity within the context of the general educational policy that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training." (para. 7, Amended Consent Agreement)

Pennsylvania undertook to identify and provide suitable educational programs for all mentally retarded children between the ages of 6 and 21—and younger, where the Commonwealth provides a program for children at an earlier age.

The first task was finding these people. We had at the beginning very little idea of how many pupils we were talking about. We developed COMPILE, the *C*ommonwealth *P*lan for *I*dentification, *L*ocation and *E*valuation of Mentally Retarded Children. Calling for a coordinated effort between the Secretary of Welfare and myself and all of our instrumentalities—(in the case of Education, these include school districts and intermediate units), the plan used such extensive techniques as:

a search of records of the local school districts, intermediate units, county MH/MR units, State Schools and Hospitals (including waiting lists) and interim care facilities

publication of the search in the various media

selective house to house canvassing

a 24-hour toll free telephone service to receive reports

local task forces

two Federal Court-Appointed Masters to oversee the efforts.

We have so far either located or re-evaluated some 19,000 children. We have put together what is probably the most complete identification system and current census of school-aged mentally retarded children in the world.

Our second task has been to implement appropriate programs of education and training for these students. This we began through COMPET, the *C*ommonwealth *P*lan for *E*ducation and *T*raining of Mentally Retarded Children. The plan is made up of 20 learning modules specified in terms of growth and development according to behavorial characteristics. The selection and use of modules is coordinated with the evaluation phase of COMPILE, permitting a high degree of personalization of the program. Furthermore, COMPET is designed in such a way as to encourage and allow teachers to construct additional modules which are evaluated by the Right to Education Office for effectiveness, appropriateness, and possible inclusion in later editions of the COMPET manual. COMPET is meant to be a working, changing document. We are presently in the process of revising this document.

The Right to Education Office was established for the specific purpose of ensuring compliance by the appointment of a director, and supportive staff including regional coordinators to provide rapid answers to questions arising in the field. The work of the Right to Education Office also includes continuing to develop and improve documents such as COMPET, evaluation forms and the Referral Placement Master form, assisting the formation and functioning of local task forces, providing a bridge between the State Department of Education and Welfare for a co-mingling of resources, and extensive inservicing of local educational agency personnel (teachers, administrators, principals, and supervisors). In the last, we have received invaluable assistance from the USOE Bureau of the Educationally handicapped, including leadership training institute grants. The Right to Education Office is staffed by Department of Education personnel, funded with state money, and other staff employed with Federal funds. Without the ready availability of Federal funds, the formation of this office would have been substantially delayed.

As another means of monitoring compliance to the Federal court order, a state task force was established, consisting of a representative from the Department of Education, the Department of Welfare, the Office of Administration in the Governor's Office, and the consumer. The purpose of this task force was to assure the availability of the full resources of the state and to ensure the compliance of their various instrumentalities.

Let me refer to one additional aspect of the PARC decision which has special relevance for the legislation before this subcommittee: the "due process" procedure:

The Commonwealth is enjoined:

(i) to provide notice and the opportunity for a hearing prior to a change in educational status of any child who is mentally retarded or thought to be mentally retarded;

(j) to re-evaluate the educational assignment of every mentally retarded child not less than every two years, or annually upon the parents' request, and upon such re-evaluation, to provide notice and the opportunity for a hearing." (Order and Injunction)

The procedures for such hearings meet the provisions of Senate Bill 6.

We endorse "right to education" legislation. I might point out to you that Pennsylvania has gone beyond the strict requirements of the Commonwealth Consent Agreement. Beginning with last school year, the Department of Education assumed responsibility for education to mentally retarded children in community type programs including, but not limited to growth and development centers, private licensed facilities, programs operated by the Department of Welfare, and interim facilities. Again, we are eager to move as quickly as possible to a zero-reject status.

Beginning with the current school year, the Department of Education also assumed responsibility for the education of mentally retarded children in the nine State Schools and Hospitals throughout the Commonwealth which was previously the responsibility of the Department of Welfare.

We have depended on funds available through Education of the Handicapped Act, Parts B, C, and D (P.L. 91-23), Elementary and Secondary Act, Title III, and Title I (P.L. 89-313) to finance certain aspects of this program. The Right to Education program has so far increased special education instructional expenses for Pennsylvania by approximately 16 million dollars for the current year

This does not include increased costs for transportation.

The citizens of Pennsylvania have taken on the cost of these expanded programs. Last year the legislature passed and the Governor approved funding procedures to make current payments to districts. This was done through the use of Federal funds and through the redirection of state funds in the amount of 41 million dollars.

Mr. Chairman, the Commonwealth of Pennsylvania fully supports the passage of Senate Bill 6.

[The prepared statement of Mr. Carroll follows:]

PREPARED STATEMENT BY DONALD M. CARROLL, JR., DEPUTY SECRETARY AND COMMISSIONER FOR BASIC EDUCATION, DEPARTMENT OF EDUCATION, COMMONWEALTH OF PENNSYLVANIA

Mr. CARROLL. Mr. Chairman and members of the committee:

I am Donald M. Carroll, Deputy Secretary and Commissioner for Basic Education, Pennsylvania Department of Education, and Chairman of the State Task Force on Right to Education. Thank you for permitting me the opportunity to address this distinguished committee.

I commend Senator Williams, Chairman of the Full Committee and Senator Randolph, Chairman of the Select Subcommittee for moving with alacrity and enthusiasm on this critical matter of renewing Federal support for handicapped children in the United States. No nobler cause can be served in our nation than to provide the undisputed right to an appropriate free public education for handicapped children and youth. Federal legislation has assisted states striving to reach this goal. However, the job remains incomplete.

The legislation before this committee, namely S.6 will enhance the reality of an appropriate education through funding that provides ample, high level, tion will have profound financial implications for the funding of special education programs in general (a possible $98 million) for Pennsylvania. Funds in the amount of $98 million for Pennsylvania would mean we could report more nearly 100 percent of the handicapped were being served than our commonly called the PARC decision or the Right to Education decree. estimated 59 percent as reported on page three of this bill.

The success of the proposed legislation S.6 could greatly reduce or eliminate such situations.

As the Secretary discussed earlier, I too would like to discuss in some detail the consent agreement between the Commonwealth of Pennsylvania and the Pennsylvania Association for Retarded Children. This agreement has been federal leadership; increased local resources; and research efforts in low incidence handicapping conditions about which little is understood. This legisla-

On January 7, 1971, the Pennsylvania Association for Retarded Children (PARC) filed a class action suit in the United States Federal District Court for Eastern Pennsylvania in Philadelphia on behalf of 15 children who were mentally retarded or thought to be mentally retarded. These children for one reason or another had been either denied access to an educational program or had been enrolled and then excluded from an educational program.

On May 5, 1972 the Federal District Court handed down an order now commonly known as the PARC decision or Right to Education. The consent agreement on Right to Education essentially said to the Commonwealth it must do two things:

1. Carry out the census of mentally retarded children with the purpose to identify, locate and evaluate all such children.

2. Prepare a plan for the appropriate education and training of all such children.

I should re-emphasize that this decision dealt with only one type of handicap: mental retardation. This was the beginning of the "zero reject' 'concept which meant no child, no matter how severe his retardation shall be denied access to a free public program of education and training appropriate to his needs. The legislation before you is far broader in scope. In all respects, however, the PARC decision is immediately pertinent to this legislation.

As the Secretary of Education has already mentioned through the COMPILE document, we have put together what is probably the most complete identification system and current census of school-aged mentally retarded children in the world. In one of the Great Cities of this nation, Pittsburgh, full implementation of a "zero reject" system in the education and training of the mentally retarded has been accomplished.

The census data revealed that 2,571 severely and profoundly retarded children, living in the community had never entered school and were denied an appropriate free public education. Approximately 3,300 kindergarten age children entered programs because of the Attorney General's Opinion that "school age" in Pennsylvania is the earliest age at which a school district admits children. Between the ages of 16 and 21 there were about 4,200 individuals who returned to school.

Through the educational plan, known as COMPET, there was an abundance of "know how" in educating the mild and moderate retarded while little was known or understood about the education of the severely and profoundly retarded, a great number of whom are multi-handicapped.

Had the Commonwealth not felt so strongly that the educational system must be accessible to all young people, the chorus of "This can't be done" might have been overwhelming.

There was a genuine and practical pessimism about whether it could all be put together in terms of program, staff, facilities and transportation.

Equally important, could it be done in a relatively short time. In-service was effective in accomplishing the above.

Pennsylvania is not a state that deals with gradualism—equal protection under the law means equal for all with full implementation immediately. State government took the position of full compliance with the consent decree and maintained that posture from the time the agreement was signed.

The funds to maintain this posture were not always readily available but we believe we are well on our way to implementing an exemplary program with the State funds that were available.

If Federal sharing is to result in an increase in the amount of funds Pennsylvania will receive to carry on the kinds of programs for the handicapped which have proved so significant, this would appear to us a vital consideration for supporting such legislation as S.6.

We endorse "right to education" legislation.

As I have described above, state governments can be responsive to the needs of handicapped children. The Federal Government should be equally able to be responsive through full-funding legislation. However, in no way should this legislation be so filled with bureaucratic red tape that flexibility to state and local education agencies impedes implementation of programs and services to the handicapped.

Although compliance with the consent decree was carried out under court appointed Masters through October 1971 to October 1973, fully supported by state funds, state government has not allowed this concept of monitoring compliance to cease at the expiration of the Masters' term. The Commonwealth has assumed the role of advocate on behalf of handicapped children through the state task force supported by state and federal funds.

The Right to Education Office was given responsibility for monitoring compliance with the Federal Court Order as presented to all chief school administrators and interested parties in an open meeting which the Governor addressed.

The Masters no longer conduct hearings or act as monitors. Nevertheless, the Commonwealth views the consent decree as vital. In this regard the state task force role will continue in full force with expanded responsibilities and all the weight of the Masters.

The citizens of Pennsylvania have assumed the costs of programs and services under the consent decree known as "Right to Education."

Mr. Chairman, Pennsylvania does not come before this committee with "hat in hand" because the citizens of the Commonwealth as the Secretary stated, have put forth a state effort approaching $100 million and a local effort of nearly $50 million to educate handicapped children. But continued and expanded federal funds are critically needed to maintain the momentum established by this court case.

At the present time approximately 7 percent of the total effort for the education and training of handicapped children in Pennsylvania is federal dollars. This percentage appears to be consistent across most states.

The Federal Government may have highlighted the problem of educating the handicapped, but it certainly has not provided sufficient funds to do the job. Indeed, the laws provide only for supplementing, expanding and improving program not for continuous support. Therefore, the States are always faced with increasing burdens maintaining, supplemented, expanded and improved programs whenever federal dollars do not flow or are interrupted.

The proposed legislation with full funding will eliminate what is considered to be "undue burdens" by some states. The "undue burden" will not be permitted to exist as an excuse for failure to provide a tax supported free public education for the handicapped upon enactment of S.6.

We are acutely aware of the financial burden of such programs, and of the need for committed and continuing financial support from the Federal Government.

Senator SCHWEIKER. Our next witness is Mr. Dennis Haggerty, court appointed master, *PARC* v. *Commonwealth of Pennsylvania.*

While he's coming up here I would like to submit for the record a statement from the chairman of this subcommittee of which I serve, Jennings Randolph, Senator from the State of West Virginia. Here's his statement that we'd like to submit today.

PREPARED STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. I am gratified that the able Senator from Pennsylvania, Mr. Schweiker, a member of the Subcommittee on the Handicapped, which I am privileged to chair, is presiding over the fifth in a series of field hearings on S. 6, the Education for All Handicapped Children Act, in his home State of Pennsylvania. Due to previous commitments, I regret my inability to be present and participate in the views about programs for the handicapped with my neighbors from Pennsylvania. I am aware of the outstanding record of service to the handicapped by the various organizations and agencies in this State.

The advocates for the handicapped in this State will long be remembered for an historic first: The *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania* court decision. This action provoked a series of similar actions in a great many other States. It also proved that the day is long past when we hid our physically and mentally handicapped children from society.

Since 1961, the Congress has laid the foundation for a comprehensive program for support for educational programs and services for all handicapped individuals. These laws provide an impressive record of enactments for research, professional training, and educational programs. However, expansion of these educational opportunities must be continued. S.6 is an attempt by the Congress to continue our efforts in working toward a goal of equal education and training opportunities for all handicapped Americans.

Senator SCHWEIKER. Now, Mr. Haggerty, we'll let you proceed at this point.

STATEMENT OF DENNIS HAGGERTY, ESQ., PHILADELPHIA, PA.

Mr. HAGGERTY. Thank you, sir. Good morning, Senator Schweiker. My name is Dennis Haggerty, as indicated, and I'm an attorney in general practice of law in Philadelphia, Pa. It gives me great pleasure to address this Senate Subcommittee on Labor and Public Welfare on the Education of All Handicapped Children Act, S.6. I recently completed a 2-year effort as one of the masters in the right to education suit, a civil action in the U.S. District Court for the Eastern District of Pennsylvania. The assignment there was to oversee the implementation of the consent decree wherein and whereby the State of Pennsylvania had consented, through its department of welfare and department of education to educate all retarded children, many of whom had been excluded from the educational delivery system.

I recommended that PARC hire an attorney in 1969 to investigate the best method of protecting the rights of the retarded and that started the education suit. This suit, begun in January 1971, sparked many class action suits throughout the United States, and I personally traveled to many States encouraging either class actions or legislative action to provide a better delivery of education to all citizens—particularly the handicapped.

The issues presented to the court in the *PARC* case were rather simple and they were:

That many retarded children were not being given an educational opportunity;

That the education code allowed certain classifications of retarded to be the responsibility of the welfare department;

That the welfare department for the most part was unable to deliver an appropriate education;

That the creation of this shift in responsibility permitted many handicapped children to receive nothing, and that this device resulted in a serious deprivation of the constitutional rights of those involved;

That the mere classification of retarded—educable and retarded—trainable with assigned IQ's lead to the premise that all below those designated IQ's were RN—retarded nothing.

Rather than the above, the presumption should have been—all persons are capable of some education—a zero reject principle.

The court ordered due process hearings in July of 1971—prior to the consent decree, the realization being that deprivations without at least an opportunity to be heard should be addressed immediately.

The consent decree approved in October 1971, and amended in May 1972, provided:

That such deprivations should cease;

That the school code shall be interpreted in such a way as to prevent exclusion;

That the State through its departments of education and welfare should provide education for all retarded;

That the attorney general shall issue opinions on these points to insure an appropriate delivery of education to all Pennsylvania citizens who are retarded.

In the travels of the Masters throughout the State of Pennsylvania and indeed, in my travels around the country, the willingness of educators seems very evident. The ability to deliver, however, did not seem present—and the excuse of, "We need more time" can readily be translated into, "There is no way the legislature is going to provide adequate funding."

The key to success in the education of all citizens lies in the State's willingness and ability to deliver appropriate education. I believe the lack of willingness in the past has been because of the inability to finance such programs. Given, therefore, an assist with financing, there should be no difficulty in delivering appropriate education within a reasonable time.

One can hardly expect teachers overnight when the curriculum in the teaching institutions never addressed itself to the severely or profoundly retarded.

Should we not get back to a simple definition of education so that curriculum could readily be changed or expanded? Should not education include all the ways in which one person tries to influence the behavior of another person?

I am convinced that a slight shifting in our national priorities away from hardware, whether it be space or military, will provide tremendous dividends for our country—not only in the direct benefit to those receiving education, but to all those whose lives are touched by the handicapped—the additional teachers, paraprofessionals, psychologists and many others.

This is after all, a more normal way to live, and would result in less institutionalization in this class of people—a goal espoused by our President on November 16, 1972. History has taught us that inappropriate institutionalization is merely warehousing of human beings.

One of our former Presidents has said that "History will judge a society by what it does for those in that society who are least endowed." Who could dispute that the beneficiaries of the present bill are clearly the "least endowed."

I would like now to omit reading verbatim the rest of this critique which is a part of the Masters report and suggest that I submit to your office a copy of the Masters report which would have the critique complete.

Senator SCHWEIKER. Fine. And I might say that we'll include that in the record.

Mr. HAGGERTY. Thank you. If there are any questions I'll be happy to answer them.

[The material referred to was not available to the committee for inclusion in the record at the time of printing.]

EVALUATION OF IMPLEMENTATION

Senator SCHWEIKER. What is your overall evaluation of the implementation of efforts? Where does the State stand?

Mr. HAGGERTY. Well, I'm proud to say that Pennsylvania was the leader. It's ironic that this effort started as a result of PARC's evaluating or looking into the situations in the nine State schools and hospitals. It was a direct result of the investigation of Pennhurst in 1968. From that, realizing that there were 3,100 people there at that time, residents in an 1,800-bed facility and only 200 in programs, we reasoned that this should not be. As we moved from that point to the point of recommendation hiring counsel and to address the question of where we could make the best impact, it was decided education would be that area.

Bringing this up to date, I think we've been very fortunate to have an administration here in Pennsylvania which came in at a time this suit was started, or a few weeks later, and that they have tried diligently to implement the decree in every facet.

Now in our Masters report we were critical in some areas, but I understand this. We opted in our travels throughout the State in the Masters hearings that we held monthly, we opted for doing away with the cross-examination and swearing of witnesses because we felt that we were now addressing people who were welfare department personnel, not strictly teachers, and members of the education community. The abrasiveness that could have presented itself in this kind of a cross-examination setting seemed not to be the approach to take. So what we did was try to get them together and make a marriage in the most amenable way.

I'm happy to say that they're well along in this project. I'm not saying that we're solving all our problems. I believe in our travels in the last 3 months when we asked the administrators of the independent units, the 29 which we have throughout the State, had they realized where the shortcomings were, the response was yes. And then, what, if anything, have you done to change the curriculum in the colleges and universities that teach teachers of retarded. The answer was nothing—not even written recommendations. We felt that there was a bit of foot dragging there. I feel that the State Department of Education has to exercise its prerogative as the leader in the field and not sit by and wait for the local counties and local school districts to attempt to pick up the ball and then the State try to juggle these various 67 county balls in the air.

Senator SCHWEIKER. Have you had a chance as yet to review the requirement in our Senate bill, S. 6, for due process and an individualized programs requirement. If so, how might you evaluate these provisions?

Mr. HAGGERTY. I have had that opportunity, sir, and I might say this area, I'm content with what is presented in Senate bill 6. We had difficulty in the consent decree in this area because we concluded that the due process notice was too broad. It did not really let the parents down as easy as they might have wanted to be let down. When they got the due process notice a lot of them were confused. Some of them felt since they had borderline retarded children who were possibly in special education but could move into society at a later date that they were not willing to put the label of retardation on their children. Of course we're now addressing ourselves to a broader bill for handicapped children so it may not be the same hangup as we had with retarded. But the President's Committee on Mental Retardation several years ago printed a pamphlet called "The Six Hour Retarded Child", with the suggestion that he was only retarded in the classroom and not in his neighborhood where he could function quite well and work with his peers in the house setting or in the neighborhood setting, but then could not do so in a school setting.

I'm content with the provisions of the due process Senate bill 6 as they stand.

ADEQUACY OF IDENTIFICATION

Senator SCHWEIKER. Do you believe that all the mentally retarded children have been identified in the Commonwealth of Pennsylvania?

Mr. HAGGERTY. No, I do not. For some years we have had a survey of whole students throughout the system, which is required by law in Pennsylvania, but there was no provision for listing a handicap which might need special attention. And when I say no, I do not direct criticisms to the State on this regard. I more particularly direct criticisms to some of the reluctant parents who do not wish to identify their children as ones with special problems. I appreciate their concern. I've seen parents with children that come on the special school bus and are dropped off at the regular school level and are referred to by their parents as something other than normal. I do appreciate their concern but I feel that this is a job that must be done in concert with the State department of education in educating the parents as to what is best for their child and not for themselves.

Senator SCHWEIKER. Do you have any basis to give us an estimate of how many children are in that category? Could you tell us a little bit about how much of the problem we have identified as opposed to how much of the problem we haven't identified?

Mr. HAGGERTY. With the success of the COMPILE, Commonwealth's Plan to Identify, and with the door-to-door surveys as a testing method in the three areas of rural, suburban and urban, I feel that the problem is de minimus. I couldn't put a percentage on it or numbers but I do feel it's de minimus.

Senator SCHWEIKER. Are there areas in the State where in your opinion the decree has not been implemented?

Mr. HAGGERTY. Well, if I were to suggest counties where compliance has been excellent and counties where compliance has been less than desirable, I would have to say that your own county of Montgomery County would have to take first position. I don't mean have to take, I mean ~~it~~ does take first position. And that Philadelphia County would have to take a relatively low position, possibly last.

Senator SCHWEIKER. What about institutionalized children. How do you work them into your evaluation and program?

Mr. HAGGERTY. Well, that was a major part of the problem because as I indicated, that was the way we began. And the State's Right to Education Office saw to it that we brought together the persons in charge of a program of delivery of any kind of education or training in the nine State schools and hospitals, with the respective counterparts in the education system. The two of them working together, and Masters meeting held for them to meet together, resulted in an exchange which was beneficial to both. Early on in the Masters hearings we had to place the responsibility for the delivery in one of the departments because that was the whole hangup. And we placed it with education. So, we put in education the responsibility to see to it that their counterparts in the nine State schools and hospitals, where they were located, and the interim care facilities which fed residents into these State schools and hospitals were responsible for making sure that delivery was implemented in order.

PROBLEMS STILL FACED

Senator SCHWEIKER. How would you enumerate, if you could, the problems the state still faces in this whole approach?

Mr. HAGGERTY. Well, I think not only this State but many States and the education community faces a problem of redefining what their roles are in educating of children. The redefinition is going to be an agonizing thing because I realize that in that community there are progressives and liberals and conservatives. There are some people who believe that if a child with a 50 IQ and below functions minimally that he can't be educated, that what he needs really is training. But I just can't buy that. I have to set aside in my own thinking a difference between a human being and an animal without a rational faculty and unrational animal if you will. And I'd like to use the example of the blind man and the dog. The dog and the blind man who are walking across the street which is attuned to blind traffic may have a bell that rings once for the blind man to proceed and two bells for him to stop. And the dog may be conditioned to walk when he hears one bell and not walk when he hears two bells, but the dog doesn't realize why the bell is ringing and the blind man does. He realizes the rationale of why traffic moves and what goes on. In this area I believe that we're going to have to do away with the concepts of RE and RT, retarded educable and retarded trainable, and buy something that's different, a totally new concept of all people are educable. There may be gradations in their education but they're all educable.

COMPETITION FOR FUNDS

Senator SCHWEIKER. In view of the high costs of accepted services for physically and mentally handicapped programs in education do you see a basic competition for funds within the education community?

Mr. HAGGERTY. Yes, I do see more than that. There are separate unions for teachers of special education and teachers of regular education. I see lots of problems and of course I see the opting for the dollar. I do believe though, that where the unions have taken a look late in the game at what we were doing, and I might suggest that when PARC suggested a resource review team to look over what was happening in the new classrooms that were being set up, the union then appeared out of the woodwork literally and were then concerned. Well this is a good idea to have them concerned and

I do believe it can be worked out, and maybe I'm optimistic in this area but I believe they can work things out so that regular education will not continue to take from the pot of special funding that's available for special education which has occurred in Philadelphia County.

Senator SCHWEIKER. My next question, and I guess you partially answered it, was how do we cope with this competition?

Mr. HAGGERTY. Senator, this is a difficult one to answer but I'd just like to suggest that when a father and mother have 10 children and have limited funds and limited monies to buy food they don't starve one and let the other nine live. They just give a little less to the other nine and see that they're all taken care of.

Senator SCHWEIKER. You mentioned Philadelphia and Montgomery counties and I'm not so much interested in a specific county as the specific differences. What I'm interested in here is why are these counties different and is this something that carries over in other urban-suburban areas, or just what factors do you evaluate as to why these differences exist?

Mr. HAGGERTY. I would be kidding you, Senator, if I knew how to figure out the manipulations that go on in Philadelphia County in funding. I can only say that when monies that are earmarked for special education are placed in the general fund as they arrive at that area in our State, whether it be through Harrisburg Federal funding or State funding down through the local level and they are used for purposes other than that, it's an area of great concern and watch-dogging must be done. It was the subject matter of a Federal court action within the last several months and the Federal court prohibited the use of funding until there was a delineation of the use of the funds for specialized and regular education.

MINIMAL STANDARDS

Senator SCHWEIKER. In your statement on page 10 you refer to "specifications and guidelines for local districts that would have served the purpose of minimal standards." I wonder if you could give us some illustration of the problems that result because of the absence of minimal standards and what more specifically you had in mind in that section of your testimony?

Mr. HAGGERTY. I'll read the statement first. "Logically, the Right to Education Office and/or the Bureau of Special Education should have drawn up specifications and guidelines for local districts that would have served the purpose of minimal standards." In that area it's my memory that the State Department of Special Education asked the 67 counties and the many many school districts in those counties for plans or what they were going to offer. It was the opinions of the masters, and remember now I am the master lawyer and Dr. Herbert Goldstein was the master educator oriented so this was his bailiwick, it was our feeling that the State would get nothing from the plans that were submitted from the lowest strata up to the top. That the State Department of Special Education should devise a plan which was deliverable down through the various chains of command. That was what we were aiming at there.

Senator SCHWEIKER. Based on your experience are there any specific things that maybe were overlooked or not covered in bill S. 6? And if you don't have a quick answer to it we sure would be glad to have any written views which you'd be pleased to present for the record later.

Mr. Haggerty. I would be happy to provide later, Senator, a detailed analysis of areas I think might be acceptable for consideration of the Senate subcommittee.

I might add at this time some of the little nitty gritty problems that we encountered are resolvable when the broad picture is looked at. For instance, in putting certain children in special education class who would act out in class and become behavior problems, some districts use the ordinance to suspend them from school as a way of getting them in the front door and putting them out the back door. Other problems were principals who felt that there was an invasion in their particular domain by telling the principal that he would now accept 30 or 35 children for education when he didn't have classrooms for them or didn't have a program for them. And we felt that the autonomy of some of the principals needed some attention in that they felt they might have to accept the child's name but it would be up to them to place them, whether they did ever place them.

Senator Schweiker. Let me say that we certainly appreciate your leadership in this area as well as your reviews and your work and your time in giving us a very practical concept of your expertise. Thank you.

Mr. Haggerty. Thank you, Senator.

[The addendum to Mr. Haggerty's statement follows:]

Addendum to Statement of Dennis Haggerty, Esq. Philadelphia, Pa.

III. CRITIQUE OF VARIOUS ASPECTS OF THE CONSENT DECREE

A. DUE PROCESS HEARINGS

By order of Court dated June 18, 1971, an opportunity to question placement was given parents who felt the child was not receiving an appropriate educational experience. Paragraph two of said order is as follows:

"No child, aged 5 years, 6 months through 21 years, who is mentally retarded or who is thought by any school official, the intermediate unit, or by his parents or guardian to be mentally retarded, shall be subjected to a *change* in educational status without being accorded *notice* and the *opportunity* of a due process hearing as hereinafter prescribed. This provision shall also apply to any child who has never had an educational assignment."

Conclusions and Recommendations

The due process notice is too broad. The form should be simplified and accompanying the notice should be a brief pamphlet explaining why the notice is being received by a parent. A lack of understanding on the part of the parents is obvious from the number of cancelled hearings after conference and explanation. Hearing offices should be chosen from many disciplines—not just from the ranks of school psychologists, who, in effect are judging their fellow psychologists. The Masters recommend a training program of a continuing nature be established to train hearing officers who conduct the due process hearings and write reports on such hearings.

B. COMPILE

(Commonwealth of Pennsylvania plan to identify, locate and evaluate mentally retarded children).

To assist implementing the court decree, the Commonwealth divided the order into two major phases, one called (COMPILE) and the other (COMPET)—Commonwealth plan to educate and train mentally retarded. Plaintiff and defendant both sought members of the subject class by individual action. The Commonwealth did so by requesting a multi-agency and multi-disciplinary effort; by establishing state and local task forces, the members of which would be representative of the plaintiff and defendant groups; by T.V.

and radio spot announcements and a 24 phone service. The plaintiff's representative, Pennsylvania Association for Retarded Children initiated a "Child Hunt" campaign with news releases, an education kit, bumper stickers, posters and the like. Both sides are to be commended on the effort given to advertise COMPILE. The results of the door to door surveys conducted in different sections verified the intensity of the "finding" effort. A total of 139 children were located by the door to door survey who had not been previously found. A total of 209 classes were established for the severe and profound, classes which never existed prior to the institution of this suit. Approximately 55 new classes were established for the educable and trainable retarded.

Presently there are 61,280 in all classes in the public schools; 3,965 in the nine state schools and hospitals; and approximately 7,500 in private licensed facilities. The total of 72,745 are now known and ready to be delivered a meaningful education commensurate with their needs. The suit itself resulted in approximately 10,000 children receiving educational attention.

C. COMPET

The outline for educational content relevant to compliance with the Consent decree is contained in COMPET. While this document was produced within the prescribed time frame, this fact alone does not suggest compliance. The fact is, implicit in COMPET are a number of administrative and pedagogic considerations that could only become explicit as a function of its implementation. For example, the state of the art of child evaluation of the type represented by the plaintiff permits at best for a tentative educational program for any given child. A more precise program is the product of experimentation with prescribed elements of COMPET so as to derive both content and sequence of learning on a more dependable basis. Similarly, such basic educational issues as placing children in instructional groups, the assignment of teachers and ancillary staff, the designation of facilities, i.e., classrooms, home instruction, etc., all require data not immediately available but certainly possible of elicitation and court supervision given attention to these issues in the course of COMPET's implementation.

It is worth pointing out that the plaintiff cannot be considered within the framework for educational programming now familiar for normal and educable mentally retarded children because of the severity and multiplicity of their disabilities. In this sense, then, the implementation of COMPET requires a new and open view of educational programming as it includes content of instruction, modes of instruction, qualifications and nature of staff, educational facilities or settings, and the many logistical and administrative decisions impinging on such a novel enterprise. Therefore, the critique that follows incorporates an assessment of COMPET as content of instruction and as a basis for the evaluation of a priori decisions relative to its utilization.

EDUCATIONAL PROGRAMMING

Almost immediately after the Masters assumed their responsibility, the leadership and staff of the then Bureau of Special Education in the State Education Department and the leadership and staff of the Rights to Education Office (REO) were notified that there needed to be developed a strategy for compliance with the Consent Agreement that specified that plaintiff children and youth would be provided with an education commensurate with their needs. The proposal by the Bureau of Special Education that each of the I.U.'s be required to submit to the Bureau its plan for a total education program was rejected by the Masters on the grounds that 1) this would be an abdication of the Bureau's role and 2) this could lead to such rampant diversity that management at the State level would be impossible. Privately the Masters agreed that it would be a burden on the courts to attempt to respond to the merits and/or limitations of so numerous and diverse an array of plans.

The Bureau and REO were, however, more concerned with the logistical problems generated by the Sections of the Consent Agreement prescribing finding and classifying children. Thus, it was not until late in the summer of 1972 that attention was given to the issue of programming.

At this point, the Masters intervened and helped REO locate the initial version of a program developed in California for somewhat similar children to the plaintiff children in this case. This document was obtained, printed, and distributed to prospective teachers.

This left to be designed the standards for teaching and criteria for educational facilities; two essential elements of the educational program but far from the total. Beyond this, there needed to be a design for in-service training, supervision and coordination, and other administrative factors. It was agreed that the first priority would be the formulation of educational content immediately followed by in-service training. The other factors would then be attended to in sequence.

The educational content (COMPET), having been distributed, REO staff launched a state-wide program of in-service training which was designed to acquaint teachers and psychologists with the information basic to their work. Courses toward this end were offered at institutions of higher learning and experts were called in by individual districts.

The major criticism from the I.U.'s local districts and from PARC was that COMPET was too little too late. The criticism was justified. But it was pointed out by the Masters that the dearth of reliable and valid educational programs required by plaintiff children rendered anything resembling COMPET an experimental instrument that needed considerable application, evaluation, and revision before it could acquire value. The Masters therefore recommended that COMPET be viewed as an experimental document and that the school year 1972–73 be used as a year of application, experimentation, evaluation and revision. This was acceptable to all concerned.

When it became clear to the Masters that REO was not assuming leadership in this task, the Masters appointed a committee to study the structure of COMPET and to recommend necessary changes. The membership of the appointed committee represented the State Departments of Education and Social Welfare and the Plaintiffs. Their report is attached hereto marked Exhibit *A*.

The recommendations of the committee to study COMPET along with those of the plaintiffs (Exhibit *B*) led to the appointment of a committee to revise COMPET which was organized by REO. This committee was in an organizational stage at the time of this report.

Program Related Factors—As stated earlier, there are three inescapable correlates of educational content. These are 1) assigning children to learning settings congruent with their characteristics and needs, 2) assigning teachers on the basis of their competencies as required by the educational content and the characteristics of children, and 3) designating educational facilities and technologies that are harmonious with the physical and intellectual disabilities of students.

Since the plaintiff children, for the most part, constituted a type hitherto excluded from schools, it was clear that existing procedures for assigning children, selecting teachers and designating facilities would conform minimally, if at all, to their characteristics and needs. An important element of the planning leading to compliance should have been in response to this aspect of programming.

Logically, the REO and/or the Bureau of Special Education should have drawn up specifications and guidelines for local districts that would have served the purpose of minimal standards. The Masters urged such action in conference with staff and in the course of Masters Hearings. Nevertheless, apart from on-the-scene assistance given by State Consultants, no formal standards or guidelines emerged from the responsible agencies with the result that local districts were left to their own devices. In the main, the accommodation of plaintiff children has been in existing classes. The resulting heterogeneity in these classes inevitably penalizes both plaintiff children and those already clients of the educational system. The Masters Hearings reveal where plaintiff children have been grouped more homogeneously, they are housed in ordinary classroom or equivalents in other buildings under the tutelage of teachers trained and experienced with children of types other than those in their classes.

The absence of standards and guidelines has been felt most in the institutions for the mentally retarded operated by the Department of Welfare. Here there was and continues to be notable drift; formerly educationally neglected residents are receiving, at best, token attention. Even where institutional administration is attempting to comply, the absence of standards and guidelines lead to rather bizarre remedies. In one institution, for example, the leadership is responding to compliance by bussing ambulatory residents some 35 miles round trip to a formerly abandoned school. The children continue to be isolated from other school children.

The report of the REO dated December 11, 1973, shows that as of that date more than one half of residents of state schools eligible for educational treatment are receiving less than five hours of instruction per day.

Senator SCHWEIKER. Now at this time I'd like to ask the panel on the State task force for implementation to come forward. If you will please come forward and sit at the table and we will ask each of you to identify yourselves and the organization you represent and your position.

I wonder if we might start on my right and identify yourself and organization and your position for the record.

Mr. POLLONI. My name is Peter Polloni and I'm executive director of the Pennsylvania Association for Retarded Citizens.

Mr. CARROLL. I'm Don Carroll, commissioner of basic education and chairman of the State task force.

Mrs. ZARFOSS. Gweneth Zarfoss, assistant director of the Governor's Office for Human Resources.

Mr. COYLE. Frank Coyle, director of the Governor's Office for Human Resources.

Mr. MAKUCH. I'm Gary Makuch from the Office of Mental Retardation in the Department of Public Welfare.

Senator SCHWEIKER. I think what we're going to do in the interest of time is insert all your statements in the record and then start with the chairman and go around the panel to get two kinds of responses. One is a summary of any salient parts you want to reemphasize from your written testimony, which will be in the record at the conclusion of testimony of the panel members. Then also the opportunity as we go on around to respond to any of the questions that I asked of the first two groups of witnesses. This way I don't have to repeat all the questions and this gives you an opportunity to either agree or not agree with some of the preceding testimony or simply to underscore it. So, Mr. Chairman, we will put all the statements in the record and I think we'll start with you first on the basis of any summary point and then any response to any preceding questions or answers.

STATEMENT OF DON CARROLL, COMMISSIONER OF BASIC EDUCATION AND CHAIRMAN, STATE TASK FORCE; ACCOMPANIED BY PETER POLLONI, EXECUTIVE DIRECTOR, PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS; FRANCIS X. COYLE, DIRECTOR, AND GWENETH ZARFOSS, ASSISTANT DIRECTOR, GOVERNOR'S OFFICE FOR HUMAN RESOURCES; AND GARY J. MAKUCH, OFFICE OF MENTAL RETARDATION, DEPARTMENT OF PUBLIC WELFARE, A PANEL ON THE STATE TASK FORCE FOR IMPLEMENTATION

Mr. CARROLL. I'm Don Carroll, the chairman, and first I'd like to say that the task force is a rather unique addition to the carrying out of the Consent Decree in that the Decree recognized that it was not only the responsibility of the Department of Education to provide appropriate education and training for mentally retarded children, but also other State agencies and private groups had a responsibility to assist in providing this program.

With this task force the two main operational elements of State government responsible for the mentally retarded were part of welfare and part of education. The Governor's office represented, the highest policy level, and was also one of the plaintiffs in the case, but more importantly I think a private group vitally concerned with the education of the mentally retarded were represented on the task force.

The task force had the job of monitoring the degree to which school districts and essentially agents of the Department of Education and the Department of Welfare carried out the mandate of the Court Decree. In addition we were assisted and are continuing to be assisted by local task forces who are very close to the problems day to day in school districts, intermediate units and State schools and hospitals. We receive their problems and the purpose of our meeting on a regular basis is to see what agency is most appropriate for solving those problems, and in addition to find out what matters are occurring locally that might require a state-wide decision. As a group we consider what is the most appropriate way of solving those problems and we allocate the proper statewide decision to the proper agency that can best make that.

That is a provision I think you are covering somewhat in Senate 6 by your advisory committee, although our task force has considerably more authority than your advisory committee has and that's because of the nature of the Consent Decree.

Let me say that this has not been an easy thing. For example, to assist the State task force we have had a Right to Education Office. The intent of the Right to Education Office was to have an independent advocate for mentally retarded children and yet when the job came to be done it had to be done through either the Department of Education or the Department of Welfare. In addition to that, the State task force could pronounce in whatever manner it wanted to the wisest policy possible for mentally retarded children, and if this policy was not translated into an appropriation by the General Assembly it was extremely difficult to carry it out.

What I'm saying is I think the State task force has been given far greater responsibility than the task force itself could ever carry out, because while we have things we would like to do—as you know Senator, it's impossible to speak for the General Assembly in terms of how it would appropriate and our ideas greatly exceed the resources available to carry them out. But I would suggest to you that some sort of special clout be given to your advisory committee in Senate 6 because they're going to have the same problems that we have. We have more clout than they have and we have tremendous problems in operating and you may want to strengthen that particular provision.

I think other than that I'll defer to other members of the panel because Secretary Pittenger and I did collaborate on our testimony earlier, but I did want to establish what this task force was all about and some of the problems that we face.

Senator SCHWEIKER. All right. Thank you very much.

Now we'll go on to Mr. Polloni, the executive director of the Pennsylvania Association for Retarded Children, who has initiated the suit.

Mr. Polloni. Thank you, Senator. It is my privilege in this instance to speak in behalf of a number of parents and probably it is most appropriate that our president, Mr. Brown, should be here sitting in this seat to speak in behalf of the organization, but I have the dual role of sitting on the State task force which is also a unique opportunity and privilege.

Our president, Stuart Brown, did have an opportunity to address the subcommittee in Newark approximately 1 year ago. I believe it was April 13, 1973, at which time he did present a number of germane concerns with regard to the Senate bill. Generally they were positive statements and I believe you have in the record some of the concerns he expressed at that time.

As we have served on the State task force and as we have had the opportunity to relate to the continual implementation of the right to education in Pennsylvania, we continue to be an impatient group, and again, I speak for the parents of the mentally retarded. Sometimes the parents are accused of being unreasonable but I don't know where we would be if we did not have the very strong voice of this group. And this has been true not only in the State of Pennsylvania but nationally. I think Pennsylvania, however, has shown and demonstrated its ability as one of the stronger groups through-out the country in being able to speak very directly to issues.

The concerns that we continue to have about the implementation of the right to education I think again have been expressed by Mr. Haggerty. As he indicated he not only has been serving in the objective role as representing the court in more recent time, but he had somewhat of a subjective role being a parent of a mentally retarded child and his earlier involvement focusing on the institutions and presenting the initial cause for addressing this question of right to education.

We do want to repeat what Mr. Haggerty has stated in the area of identifying the mentally retarded within the community, that there continues to be in our opinion a goodly number of children of school age in our communities who are not identified who need to be identified and who need to be served. And though Montgomery County was designated one of the better counties in serving the needs of the child with special needs, nevertheless when the census was accomplished in that county approximately 150 children were identified who had not been identified previously. If we would interpret this as one of the better counties, using very minimal figures that would suggest that approximately 3,000 persons across the Commonwealth could be identified as needing services at this time.

Senator Schweiker. Who are not presently receiving services.

Mr. Polloni. That is correct. That's an assumption, it's not hard data but it would suggest that.

We have acknowledged as we have gone through the consent agreement and the implementation of this project for the last 3 years that certainly there's been a good response on the part of the Department of Education and Department of Welfare in Pennsylvania. We have acknowledged time and again that this was not always a willing response, but I think we have certainly acknowledged there's been a good response. The case itself indicated that it was not always a willing response and that there was resistance until the evidence was so strong that indeed we did need to move forward and have a consent agreement in the area of education.

At this point we feel that we have identified the children. We have most of them in the classrooms and now we need to continue to address ourselves to the quality of that education to meet the standard of appropriateness. We realize that that is a difficult task, but we need to continue to move toward that objective. This relates to the area of monitoring the system, the continual review and evaluation of what's going on. This monitoring needs to be carried out in an independent manner. You have a part of it in the record of our response to the Masters in this case that we felt that a Right to Education Office being independent should continue to exist with administrative responsibilities so that they can carry out continual monitoring of progress, quality and protections.

We have found that there continues to be defacto exclusion of the mentally retarded in that the children are known and in some instances the problem is difficult. In these cases, in fact the zero reject system is not in play and the child is not being provided the educational program. We are aware of these cases with the Department of Education and we realize there are some unique problems but we feel that they need to be addressed with a greater effort in many instances.

We do feel that the Senate bill 6 with its potential passage will certainly help in many of these instances because the financial question is a major question to reinforce and to assist the States in providing these very positive programs. The reticence to provide many times the question of dollars and to giving the appropriate ratio of staff to a child in the area of that individual child's need is related most often to cost. In some instances it has proven to be a need of a 1-to-1 relationship for a period of time to overcome the adjustment and need of that child. That is extremely costly so that these additional funds would be very, very critical in Pennsylvania and in every Commonwealth and State across this Nation.

The question of transportation was raised by Secretary Pittenger. We recognize this is a very critical problem as well. Pennsylvania is a very large State. It is comprised of a variety of geographic characteristics. It is unlike New Jersey which is basically a metropolitan State. We have many rural areas and as a result of the rural nature of many parts of the Commonwealth it is difficult to provide adequate programs, especially with the severely handicapped where you have the question of numbers and you have a question of getting that child to an appropriate program which may be quite distant from his home situation.

We also raised the question and continue to have a concern about the due process in Pennsylvania. As Mr. Carroll has suggested, due process and the local task force responses carry a great deal of weight and hopefully will carry greater weight in the future. We have expressed some concerns however about the due process program because we have seen the fact that they have become quite judicial in nature, which of necessity that have had to be, but it has in many instances put the parent in a very unfair position. They have been very fearful of entering into the due process hearing situation. They have felt many times that they have been unprepared and unsupported in going into the due process hearing situation. That's not always been true but in some instances the fact that it exists is a concern to us.

We feel that the hearing officers do need additional training and this may be something to get additional information as far as you are concerned as to what the experience has been of the hearing officers in Pennsylvania: the background of each of the hearing officers and the results of the due process hearings. I think all of this has been establishing a precedent in Pennsylvania. Some of the hearings as they have come to us in the final draft have been extremely interesting, especially the rulings of the Secretary on special cases where there has been an appeal process in behalf of the parent. This is an instance where the parent for the first time has had the unusual benefit of questioning the type of program that's been offered to their child. And I think it's been a very healthy situation. We feel that there is need of improvement in a number of areas.

Primarily and of greatest importance to us is the question of the monitoring of the system. Our role as an advocate organization has been that, to monitor. But we do have within our organization a variance in sophistication and in some areas of our Commonwealth, local associations are not terribly sophisticated. Therefore in many instances they are not capable of responding to the needs of the parents in a difficult situation. Therefore we feel that there is a need of an extension of an independent monitoring situation. We have been reviewing this question ourselves as to the possibility of setting up some type of monitoring group within the context of the Association for Retarded Citizens.

Finally the area of cost accounting we feel is of substantial importance and that some system of accountability needs to be initiated in Pennsylvania because it's a nationwide concern. Mr. Haggerty, again, has expressed the fact that moneys can be received and placed in the general account and not necessarily expended in the direction in which it was intended. We need to have some system that will give us a rather ready response of how the money has been used. The other problem is that audits are generally quite a period down the line so that when you do get the information it isn't terribly effective.

These are some of the concerns that we have as an organization. I would like to place in the record at this point summary information on compliance which our association has compiled on State schools and hospitals.

[The information referred to follows:]

SUMMARY OF INFORMATION RELATING TO COMPLIANCE IN STATE SCHOOLS AND HOSPITALS

	[illegible] eligible	[illegible] given program	[illegible] transferred: away	other unit	[illegible] unit	[illegible] of programs	[illegible] process notices	[illegible] of pro.	[illegible] formed of rights	How many in program for 3-5	1-3	-1	[illegible] to [illegible] program	Staff in-service
[illegible]	[illegible]	All but [illegible]	[illegible]	157	[illegible]	[illegible] eval [illegible]	[illegible]	[illegible] 1972	In '72	330	-	-	Info[illegible]ed	University Proj. Workshops
[illegible]	[illegible]	[illegible]	3	(approx) 161	[illegible]	[illegible] eval diagnost	[illegible]	Yes	Yes	83 5 in spec pro	64	144	Y	Workshops, Reimbursement for college credit
[illegible]	[illegible]	[illegible]	[illegible]	48	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	288	205	[illegible]	Tea[illegible] [illegible]st.	I.U. Programs
[illegible]	[illegible]	[illegible]	[illegible]	162	[illegible]	Staffing	[illegible]	Yes	Yes	300	-	-	Y	University and Staff Programs
[illegible]	[illegible]	[illegible]	1	359	[illegible]	Eval [illegible]scrip [illegible]-eval	[illegible]	[illegible]	No	366	76	0	Dep[illegible]s	1 week orientation
[illegible]	167	[illegible]	[illegible]	224	[illegible]	[illegible]	[illegible]	Yes	Yes	236	11	0	Dep[illegible]s	Reimbursement Workshops
[illegible]	220	[illegible]	0	17	[illegible]	[illegible]scrip [illegible] eval [illegible]-eval	[illegible]	[illegible]	Yes	150	70	0	Y[illegible]	2 days/year supplementary programs
[illegible]	[illegible]	[illegible]	[illegible]	33	[illegible]	[illegible]ffing eval	[illegible]	[illegible]	Yes	68	-	230	[illegible]	I.U. sessions
[illegible]	[illegible]	[illegible]	2(?)	75	[illegible]	[illegible] advocacy	No	[illegible]	No	74	19	0	Dep[illegible]s	Training sessions

BERKS COUNTY INTERMEDIATE UNIT 14

SPECIAL EDUCATION SERVICES
Hamburg State School and Hospital
Hamburg, Pennsylvania 19526
Area Code 215 / 562-7511, Ext. 215

December 4, 1973

Mr. G. Richard Bell
Compliance Office
Allegheny County Chapter P.A.R.C., Inc.
917-1001 Brighten Road
Pittsburgh, PA 15233

Dear Sir:

In reply to your letter of November 16, please accept my apologies for the delay but we have been extremely busy and could not handle this until now. In regard to questions 1 - 9 inc.

1. We have 326 school-age residents at Hamburg State School and Hospital of which 298 are in programs. Eight are medically deferred due to their very poor physical condition and 20 are awaiting additional staff in order to be picked up.

2. We have two children attending Intermediate Unit #14 Special Education classes and 30 children attending Special Education classes operated by our staff in two classrooms located in the community. [Churches in the vicinity of Hamburg]

3. Upon entry into the state school each child is evaluated by a multi-disciplinary team - Medical, Nursing, Psychology, Education, Social Service, and Physical Therapy. A placement into an appropriate program is recommended by this team upon which placement is accomplished according to the availability of staff.

4. Parents have not received due process notices. These are now in the process of circulation to the school districts of record for each child.

5. We have contacted each parent or guardian by mail on two occasions in order to explain to them their rights, the childs' program, and to invite them to return a card expressing their interest in a conference. Fifty-four conferences have been held resulting in the signing of the Request for Hearing form.

6. We have not had the need to offer alternatives although each case would be reviewed and handled accordingly should these become necessary.

7. Sixty-six students attend classes sponsored by Hamburg State School and Hospital from three to five hours each day. Two students attend classes sponsored by Intermediate Unit #14 from three to five hours each day. Two hundred and thirty students [profoundly retarded] receive one hour or less each day.

8. Those that have appeared for conferences have definitely displayed this ability.

9. We have scheduled four days of in-service training in cooperation with the local Berks County Intermediate Unit #14 Special Education department. Two of these days have been held to date; one a conference type with each exceptionality having an appropriate program and another day was devoted to in-service visitation to another facility operating similar programs.

Hoping that this will assist you with your survey.

Sincerely,

William H. Wolfinger

William H. Wolfinger
Educational Director

CC: Mr. J. Groner

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

CRESSON STATE SCHOOL AND HOSPITAL
Cresson, Pennsylvania 16630

TELEPHONE [illegible]
AREA CODE [illegible]

October 26, 1973

G. Richard Sell, Compliance Officer
Allegheny County Chapter ARC
917-1021 Brighton Road
Pittsburgh, Pa. 15233

Dear Mr. Sell:

The following is information which relates to the implementation of the Right to Education agreement at Cresson State School.

1. At the present time most of the under 21 population at Cresson is in appropriate educational programs. The few exceptions live in the Hospital Unit at Cresson and are medically certified as incapable of participating in an out-of-unit educational experience. This group of profoundly retarded multiply handicapped children does receive stimulation from foster grandparents and from an activity aide that spends a portion of each day with this group.

2. At this time 14 educable mentally retarded are transported from the facility to a variety of classes in the local school district operated by IU8. Another group of five pre-school children is transported to the Ebensburg Growth and Development Center for a day program. The situation with the local Development Center is experimental in nature and is currently being re-examined as to its [illegible] and utility to our residents. There are no residents receiving program on the living unit. All persons travel to another area of the facility for their main program experiences.

3. Each person in the facility is staffed a minimum of once a year in a general staffing which is inter-disciplinary. The information is taken from the staffing by the direct service program personnel under professional guidance and supervision, and from the general write-up a specific educational program is developed. This educational [illegible] [illegible] currently involved in an evaluation and development program. Once this program is completed the evaluation procedures will relate to a number of objective measures as well as criterion reference measures.

4. Due process letters have gone out to all parents during the past year. This has been a rather meaningless exercise since the classes at Cresson are structured by age and level of functioning and provide no meaningful choice for any given resident. Those that may fall in gray areas between programs are placed where the staff feels it is most appropriate. It would be virtually impossible for anyone outside of the facility to question the appropriateness of the specific placement without spending a great deal of time in examining the specific programs actually in operation. The whole due process procedure with respect to State Schools is not of any particular value. If parents are that concerned about the educational program within the State Schools I am sure that they are equally interested in taking their youngsters home and having them educated in a public school setting where they belong.

5. The parents are given whatever information they request. The progress of a particular child is discussed either personally or in letter form with the parent at the time of the annual staffing or upon parental request.

6. Parents have been clearly informed that they have a right to take their child home and that indeed this right is more in the form of an obligation. Most parents have not chosen to avail themselves of this option. Aside from this possibility the number of choices within the facility is extremely limited.

7. The vast majority of children are receiving a program of at least 5½ hours' duration per day. A few residents in the older profoundly retarded category may be receiving only three to five hours per day.

8. See response #4.

9. The inservice program for teachers and aides has been mainly a result of inservice provided by two staff members who attended the [illegible] workshop about 1½ years ago, and particular involvement from Penn State University staff through the medium of the consultant contractual arrangement between the State School and the University. The Right to Education Office has asked for no assistance with respect to the programs already in operation here nor have they offered any help with respect to specific inservice training programs.

I hope that all the preceding has been of assistance to you. If you desire more information please contact me by telephone.

Sincerely,

Will H. Burrow, Ph.D.
Superintendent
WHB:pb

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
POLK STATE SCHOOL AND HOSPITAL
POLK, PENNSYLVANIA
16342

PLEASE ADDRESS ALL
LETTERS REGARDING PATIENTS
TO THE SUPERINTENDENT

SUPERINTENDENT

October 30, 1973

Mr. G. Richard Sell
Compliance Officer
Allegheny County Chapter
Pennsylvania Association for Retarded Children, Inc.
917-1001 Brighton Road
Pittsburgh, Pennsylvania 15233

Dear Mr. Sell:

This is in reply to your letter of October 17, 1973 in reference to Civil Action No. 71-42.

1. Q. Are all children between the ages of 4.7 and 21 years provided with educational programs?

   A. Yes, all 442 school-age children in residence are provided an educational program. Three have not returned from summer vacations at home.

2. Q. How many children are transported away from your facility for educational purposes? How many children are transported from one section of the facility to another for their educational programs? How many children receive their educational programs within the confines of their own living units?

   A. a. One person is transported away from our facility for educational purposes to Franklin Area Junior-Senior High School.

      b. 359 are provided educational programs away from their living units. 82 are provided educational programs within the confines of their own living units.

3. Q. Describe the process through which a program is developed for a child.

   A. 1. Evaluation and initial assessment.

      2. Prescription writing based on individual needs consisting of behavioral objectives and learning activities.

      3. Re-evaluation.

4. Q. Have due process notices gone out to all parents?

A. No. Due Process Notices are in process.

5. Q. Have the parents been properly informed regarding program descriptions, individual implications for their child, hours in programming, the teacher, the location of the educational setting, etc.?

A. Whether or not they have been properly informed remains a question. However, we have through a letter from Mr. Colombatto informed each parent of the children involved in the educational program of [illegible]. The [illegible] has also carried an article in regard to the education program. The parents have all been given school calendars and have also been invited to attend an Open-House on October 25 and 26 as part of American Education Week. We have also furnished detailed educational reports to any parent who has made a request.

6. Q. Have the parents been informed of their rights and have alternatives been presented?

A. It is questionable as to whether they have been informed of their rights and alternatives. However, this should be covered through the Due Process letter once it is completed.

7. Q. How many children are in an educational program for 3 to 5 hours per day? For 1 to 3 hours? For less than 1 hour?

A. We have 366 who are receiving 3-5 hours, and we have 76 who are receiving 1-3 hours. None are receiving less than one hour.

8. Q. Do you feel that parents are able to make an informed judgment as to the appropriateness of the educational placement of their child?

A. [illegible] making informed judgment as to the appropriateness of the placement of their children, this ability would vary with every parent. Some parents would be able to assess the program their child is in and make an intelligent decision as to its appropriateness. [illegible] have [illegible] knowledge of educational [illegible].

9. Q. What type of in-service training program has been provided for your staff?

4. For [illegible] staff one week of intensified inservice training was provided covering a variety of subjects relating to educational procedures including feeding, positioning and handling, physical therapy, music therapy, behavior modification techniques, prescription writing, human development, speech therapy, etc.

If I can be of further assistance please do not hesitate to call on me.

Sincerely yours,

Joseph J. Colombatto
Superintendent

JJC/cms

PENNHURST STATE SCHOOL & HOSPITAL
SPRING CITY, PENNSYLVANIA 19475 • TELEPHONE (215) 948-3500

November 28, 1973

G. Richard Sell
Compliance Officer
Allegheny County P.A.R.C.
917-1001 Brighton Road
Pittsburgh, Pennsylvania 15233

Friend,

My answers to your questions in the letter dated 11/16/73 are as follows:

1. Yes
2. 12
3. Every student has an individualized program based on pre/post data. The program is essentially behavioral with specific target behaviors clearly delineated.
4. Yes
5. Yes
6. Yes
7. Two hundred thirty-six students receive five and one-half hours per day; 11 receive one and one-half hours homebound instruction.
8. Some parents are quite adept and astute in their input efforts, however, the vast majority of Pennhurst parents (where there are parents) are resistive to involvement.
9. On-going institutional programs; O.J.T.; I.U. workshops; tuition reimbursement.

I hope this information helps.

A friend in peace,

Robert S. Smilovitz, Ed.D.
Assistant Superintendent

RSS/cal

STATE SCHOOL
SPECIAL EDUCATION
CLASSES

CENTRAL SUSQUEHANNA INTERMEDIATE UNIT

LAURELTON STATE SCHOOL
Route 45,
Laurelton, Penna. 17844
717-922-3311

SELINSGROVE STATE SCHOOL
Route 522,
Selinsgrove, Penna. 17870
717-374-2911

Laurelton: December 6, 1973

G. Richard Sell, Compliance Officer
Allegheny County Chapter
Pennsylvania Association for Retarded Children
917-1001 Brighton Road
Pittsburgh, Pa. 15233

Dear Mr. Sell:

This is in reference to your letter of November 16, originally directed to former superintendant at Laurelton, Lawrence R. Kroner, M.D.

I'll respond to your questions in numerical order:

1. All school age residents are in educational programs with the exception of two. These two children have severe physical impairments and are in a hospital unit where they receive program imput from the physical therapy and nursing departments.

2. No residents are transported away from the facility at this time. However, two children have been referred to the IU headquarters for such service.

3. The Laurelton State School has developed a very sophisticated program development procedure which utilizes the services of a multi-disciplinary program team for each living unit. In addition to designing an appropriate program for each resident on an individual basis, the program team also assumes responsibility for individual advocacy, with each member of the team being assigned a specific number of clients as his personal program responsibility.

4-6. The procedure for communicating with parents of institutional residents regarding due process and related matters has only recently been released by the Right to Education Office. We will procede in full compliance with these guidelines.

7. 3 to 5 hours -- 74
1 to 3 hours -- 19

8. I am a strong proponent of the prerogative of the parent in any matter which pertains to the education of his child. I feel this is true regardless of the academic ability of the child or the setting in which the education is provided. However, I feel your question is somewhat ambiguous and I am not prepared to say that all parents are capable of making informed judgements on the appropriateness of an educational placement. I think in some cases the bias of the parent, as well as the specific nature of the educational placement itself, may make an informed judgement difficult. However, I am totally committed to full communication with parents. Our school policy states that everyday is visiting day, all classes are open to visitors at any time, and parents are free to discuss with me and/or the teachers any aspect of the program they choose. We value their opinions, their imput, and also value their support and follow-through during home visits and vacations.

9. We have had several In-service training sessions since the beginning of school and others are planned throughout the remainder of the year. The primary emphasis of the training so far has been to prepare teachers and paraprofessionals to deal effectively with severely and profoundly retarded children, and their accompanying handicapps. So far the training has included three full day sessions plus an additional half day seminar for teacher aides.

I trust this information proves helpful in your survey. If you would like additional information, please feel free to contact me directly at any time.

Sincerely,

G. Edwin Lint
Supervising Principal

GEL:gfs

Enclosures

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

WESTERN STATE SCHOOL AND HOSPITAL
333 Curry Hill Road
Canonsburg, Pennsylvania 15317

ROBERT J. HILTNER, ACSW
SUPERINTENDENT

TELEPHONE
AREA CODE 412, 745-0700

November 7, 1973

Mr. G. Richard Sell
Compliance Officer
Allegheny County Chapter/PARC
917-1001 Brighton Road
Pittsburgh, PA 15233

Dear Mr. Sell:

Following are our responses to the questions contained in your letter of October 17, 1973 concerning our efforts to implement the "Right to Education Consent Agreement." The responses to your questions were formulated by Mr. Joseph McKenna, Supervisor of the Intermediate Unit #1 Western State School and Hospital Special Education Program.

Question

1. Are all children between the ages of 4.7 and 21 years provided with educational programs? Note: This includes the population in your clinical settings. If all are not programmed, please give the number of those not in programs at the present time.

Response:

All of the children between 4.7 and 21 years of age are provided with educational programs with the exception of 13 on the hospital unit. It is expected that these 13 will be picked up on "hombound" 1-1 instruction very shortly.

Question

2. How many children are transported away from your facility for educational purposes? How many children are transported from one section of the facility to another for their educational programs? How many children receive their educational programs within the confines of their own living units?

Response

A. 8 students are transported away from the facility for educational purposes.

B. 157 students are transported from one section of the facility to another for educational purposes.

C. 173 students receive their educational programs on their own living units.

Question

3. Describe the process through which a program is developed for a child.

Response

An REO fourteen page evaluation is first done on the child. R.P.M. is then completed in conjunction with all of the ancillary services available at the institution. The teacher then observes and evaluates the child to determine the best educational program to meet the childs needs. A prescriptive with long and short range instructional goals is then written on the child and reviewed by the head teacher. Any inconsistencies are brought to my attention. If none exist programming is started with daily logs being kept and twice a year growth and development profiles based on COMPET written. Graphic illustration 5 of the progress of each child through evaluation is kept by each teacher along with copies of the sequential prescriptions which have been accomplished.

Question

4. Have due process notices gone out to all parents?

Response

Due process notices were sent out to the parents and answers received in October of 1972. However these notices were designed by the Dept. of Public Welfare and not the five page Dept. of Education forms. Word has just been received to send those out along with the instructions for doing so. As soon as these forms are received we will begin to fulfill this obligation once more.

Question

5. Have the parents been properly informed regarding program descriptions, individual implications for their child, hours in programming, the teacher, the location of the educational setting, etc.?

Response

As was stated in question #4 the parents were advised of programming in 1972 and new letters will be sent out.

Question

6. Have the parents been informed of their rights and have alternatives, been presented?

Response

Again, when the original due process notices were sent out there was included a page which informed them of their rights and alternatives under the right to education.

Question

7. How many children are in an educational program for 3 to 5 hours per day? For 1 to 3 hours? For less than 1 hour?

Response

330 children are in five hour per day programming. All structured classes are in session for at least this amount. The children included in the Unit Development Program have teachers and aides on their living areas from 8:00-3:30 each day and are in constant program of 1-1 and 1-2 and continual observation and on going evaluation of their progress.

Question

8. Do you feel that parents are able to make an informed judgment as to the appropriateness of the educational placement of their child?

Response

Yes I do, given the fact that the parents are informed and made aware of the programs and alternative programs that are available to their child. Direct teacher consultations and up to date records are available to the parents to insure this can be done.

Question

9. What type of in-service training program has been provided for your staff?

Response

Workshops have been held by Miss Bernice Baumgartner to upgrade the staff in working with the low functioning child. In addition several projects have been completed with local universities working along with our staff.

I hope the foregoing information will provide the detailed information you required. If further information is needed, I suggest a meeting with Mr. Joseph McKenna and/or with Mr. Alvin Sheetz, Director of Special Education, Intermediate Unit #1.

Sincerely,

Robert J. Hiltner

Robert J. Hiltner
Superintendent

RJH/pb

cc: C.A. Peters
Alvin Sheetz
Joseph McKenna

Commonwealth of Pennsylvania

Department of Public Welfare
White Haven State School and Hospital
White Haven, Pa. 18661

Wesley D. White, Ed.D.
Superintendent

Area Code: (717)
Tel. No. 443-9564

November 29, 1973

Mr. G. Richard Sell
P.A.R.C. Inc.
917-1001 Brighton Road
Pittsburgh, Pa. 15233

Dear Mr. Sell:

In response to your request of November 16, 1973, the following information is being submitted:

1) Yes - all are in programs

2) None; 17; 203

3) Children are placed in an educational setting according to individual needs. These are dependent upon age, degree of retardation and physical handicap. Educational goals for each child are met by writing behavioral objectives. These objectives are written to coincide with the recent adoption of the Referral Placement Masters, the "Right to Education" psychological report, and the COMPET document. Program objectives are updated and re-evaluated quarterly by instructors.

Growth and Development is measured quarterly through the use of assessment devices and comprehensive reports, as well as evaluative checklists. Profiles are developed for each child so that gains can be measured. This growth is monitored so that children are moved along on the education continuum. Concentration is in the following skill areas - self help, motor development, social cognitive, language and conceptual development. Classrooms are organized so that school age children are provided with appropriate education and training according to age and developmental level. The following is a listing of the educational experiences provided at White Haven:

1. Intensive care ward classes, profoundly retarded
2. Growth and Development classes - Pre-academics
3. Trainable classes
4. Educable classes

5. Supplemental Programs - art, physical education (gym and pool), library instruction

4) Yes

5) To date parents have been notified of the type class, i.e. growth and development, trainable, etc.

6) Yes

7) 3 to 5 hours - 150
1 to 3 hours - 70

8) Yes

9) Two days are officially designated on the school calendar for in-service training.

The following programs have been provided for the Special Education staff in the past year:

1. Cognitive Training in Problem Solving with Educable Mentally Retarded Children
2. Medical Cytogenetics
3. Hyperactivity
4. Validity of the Peabody Picture Vocabulary Test
5. A Cross Disciplinary Approach to Training and Programming for the Developmentally Young.

Very truly yours,

George J. Kobrick
Supervising Principal

GJK:drm
cc: Mr. William Miller
Assistant Superintendent

STATE SCHOOL
SPECIAL EDUCATION
CLASSES

CENTRAL SUSQUEHANNA INTERMEDIATE UNIT

LAURELTON STATE SCHOOL
Route 45,
Laurelton, Penna. 17844
717-922-3311

SELINSGROVE STATE SCHOOL
Route 522,
Selinsgrove, Penna. 17870
717-374-2911

November 21, 1973

Mr. G. Richard Sell, Compliance Officer
Allegheny County Chapter of the Pennsylvania
Association for Retarded Children, Inc.
917-1001 Brighton Road
Pittsburgh, Penna. 15233

Dear Mr. Sell:

Your letter of November 16, 1973 requesting information on educational programming for residents of the Selinsgrove State School and Hospital has been referred to the Central Susquehanna Intermediate Unit #16 supervisor of special classes at the state school. The answers to your specific questions are as follows:

1. All children between the chronological ages of 4.7 and 21 years are provided with some type of educational program appropriate to their needs.

2. Four children are transported to public schools; one is transported to another institution for a hearing impaired program.

3. Initial recommendations for educational programming are made by the unit team based on the results of the COMPET evaluation. Extensive diagnostic testing is done by a member of the education department to determine exact placement and an appropriate program.

4. Due process letters will be mailed to parents of all residents in accordance with the due process procedures as outlined by the Right to Education office October 23, 197

5. All parents have received detailed progress reports on their children including the class placement, teacher, location, program description, objectives, and hours of programming.

6. The parents have been informed of their rights and have been presented with alternative including the procedure for requesting a hearing.

7. 53 children are programmed from 3 to 5 hours daily
   64 children are programmed from 1 to 3 hours daily
   144 children are programmed less than 1 hour daily
   1 attends deaf-education; 2 attend deaf-blind education; 2 attend adult education

[illegible] to [illegible] of their [illegible].

[illegible] through scheduled [illegible] pertinent topics, [illegible] for college courses.

[illegible] to you. If you have any further [illegible]

[illegible]

[illegible]

JJ/[illegible]

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

EBENSBURG STATE SCHOOL AND HOSPITAL
Ebensburg, Pennsylvania 15931

Harry M. [illegible]
SUPERINTENDENT

TELEPHONE
AREA CODE 814 [illegible]

October 22, 1973

Mr. G. Richard Sell, Compliance Officer
Allegheny County Chapter of the
Pennsylvania Association for Retarded
Children, Inc.
917-1001 Brighton Road
Pittsburgh, Pennsylvania 15233

Dear Mr. Sell:

I am in reply to your letter of October 17, 1973, requesting information regarding implementation of the Right to Education Consent Agreement (Civil Action No. 71-42). The following are answers to the questions you asked.

1. Are all children between the ages of 4.7 and 21 years provided with educational programs?

   All residents between the ages of 4.7 and 21 are involved in some education program at the Ebensburg State School and Hospital.

2.A. How many children are transported away from your facility for educational purposes?

   284 are transported to Ebensburg Boro School.
   50 are transported to Admiral Peary Vocational-Technical School.

B. How many children are transported from one section of the facility to another for educational programs?

   18 children are transported to other areas on-grounds.

C. How many children receive their educational programs within the confines of their own living units?

   487 children remain on the ward for education.

3. Describe the process through which a program is developed for a child.

   Individual staffings are used as the initial part of developing the program and skills, weaknesses, areas of interest, etc. are incorporated to develop the program.

4. Have due process notices gone out to all parents?

Not as of this date.

5. Have the parents been properly informed regarding program descriptions, individual implications for their child, hours in programming, the teacher, the location of the educational setting, etc.?

Not as of this date. Regarding the Master's Hearing of October 2, 1973, at the Ebensburg State School and Hospital - Mr. Vaveris' statements: See transcript of statements.

6. Have the parents been informed of their rights and have alternatives been presented?

Not as of this date by the Intermediate Unit #8. The parents may know of their rights from other sources.

7. How many children are in an educational program for 3 to 5 hours per day? For 1 to 3 hours? For less than 1 hour?

120 children are involved 3 to 6½ hours
268 children are involved 1 to 3 hours
481 children are involved for less than one hour

8. Do you feel that parents are able to make an informed judgment as to the appropriateness of the edcuational placement of their child?

Only about 40% of our residents have any family contact. I believe that many parents could make a good judgment as to an appropriate education program if they tried, but most do not seem to have any interest. Through our Team System, each resident has an advocate who can and does make recommendations to the Team as to programs that are needed for their clients.

9. What type of in-service training program has been provided for your staff?

Our Institution staff has done all of the in-service training for the Intermediate Unit #8 people who are working under the Right to Education. A complete training program for all staff has been done, and continued training is scheduled throughout the school year.

Sincerely,

Richard G. O'Brien

Richard G. O'Brien
Assistant Superintendent

RGO/pgt

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

EBENSBURG STATE SCHOOL AND HOSPITAL
Ebensburg, Pennsylvania 15931

J. R. CONNOLLY, M.D.
SUPERINTENDENT

TELEPHONE
AREA CODE 814 472-7350

October 26, 1973

Mr. G. Richard Sell, Compliance Officer
Allegheny Chapter of the
Pennsylvania Association for Retarded
Children, Inc.
917-1001 Brighton Road
Pittsburgh, Pennsylvania 15233

Dear Mr. Sell:

Since we sent you the letter of October 22, we have made some changes in some programs.

These should be added to your copy of the questionnaire:

#3. Development skills are measured by diagnostic tools to evaluate students and provide individual programs and Education curriculum.

#7. 288 3 - 6½ hours
205 1 - 3 hours
375 less than 1 hour
Continual changes in additional time will take place.

#9. Intermediate Unit 08 has Dr. Kazdin as a Consultant in Behavior Modification. They are having year round In-Service Training from him.

Sincerely,

Richard G. O'Brien

Richard G. O'Brien
Assistant Superintendent

RGO/tal
cc: 2

ADDRESS ALL COMMUNICATIONS TO THE SUPERINTENDENT
VISITING HOURS DAILY 10:00 A.M. TO 4:00 P.M.

CAPABILITY OF STATE TO PROVIDE SERVICES

Senator **Schweiker**. I'd like to ask, did your organization see the department of education in Pennsylvania as having the capability at present to deliver of all the educational services to the mentally retarded child?

Mr. **Polloni**. I think the testimony that's been given today would suggest that the readiness to provide all the education at this moment is not there and that the biggest problems are related to finance and training of personnel. There is an indication on the part of the department that they are moving in these areas. Once again, the parents of the mentally retarded are impatient, impatient in that they felt that there was legislation in the early 1950's that would assure such programs and that they have been going through many years without the programs, especially for the more severely and profoundly handicapped child and some of the moderately handicapped children. It may be restricted by finances at this time.

Senator **Schweiker**. What about your thinking on the monitoring and the evaluation of the programs on a continuing basis?

Mr. **Polloni**. Well, as I indicated our feeling is that the current system, established by the direction of the court that there be a State task force, a local task force, a right to education office are important continuing mechanisms. These avenues need to be reinforced in Pennsylvania. The local task forces we have found to be variable again in their composition and quite wide in variation in their response to the problems within their communities. We feel that's a very critical area of continuing monitoring.

We requested the Masters consideration, the court's consideration and of the Department of Education's that the composition of a local task force might be 50 percent consumers so that the reaction and response of the local task force might be governed by those very close to the problems and might mobilize the local task force into action.

We feel that there needs to be the independent monitoring effort. Again this could be carried out by the continuation of a right to education office at the State level with independent status that would either report to the Secretary of Education or the Commissioner of Basic Education, but that it would have status and it would have administrative responsibility to continue its monitoring. We feel that there needs to be totally independent monitoring such as provided by our own organization.

Senator **Schweiker**. Thank you very much.

We'll call Mr. Gary J. Makuch next, director, Bureau of Consulting Services.

Mr. **Makuch**. Good morning Senator. We from the department appreciate the opportunity to meet with you and discuss Senate bill 6 this morning.

I'd like to address myself to one of the questions you raised when you were speaking with Mr. Haggerty and also to a comment made by Secretary Pittenger earlier this morning, that being the status of programs in the State schools for mentally retarded. I think the Secretary indicated this morning that at the time of the Consent Agreement programs in the State schools were minimal at best.

I'd like to make it known that the programs in the State schools and hospitals at the time of the Right to Education Consent Agreement were probably nearing what was occurring in the public school system in the communities. That is we were providing education programs to persons who were considered to be the so-called educable and trainable local child, but those who were severely and profoundly retarded were getting little or no programing. So there were programs existing but they were not comprehensive.

I think it was because of this that the Department of Welfare initiated with the cooperation of the Department of Education a transfer agreement, which in effect now gives the responsibility for educational programs in the State schools and hospitals for the retarded to the Department of Education. We saw that although that was not a requirement of the Right to Education Agreement we felt that it was certainly in keeping with the spirit and intent of right to education in the agreement. So at this point in time in the Commonwealth of Pennsylvania although the persons in the State schools and hospitals are the responsibility of the Welfare Department the educational programming for those individuals is now the responsibility of the Department of Education. I would suggest to you that this could be a consideration in any revisions you do of Senate bill 6, or any future legislation.

I'm not up to date specifically on the conditions in other States but I think generally the State schools and hospitals for the retarded are usually under the purview of some agency other than the education system. If we really believe that retarded persons have the right to an education it would follow then that the Department of Education in each State should assume the responsibility for that education program. We feel once again kind of proud that we have sort of taken the leadership in this area and established that fact.

Another point that you raised earlier, I think it was a question to Mr. Haggerty about what he would do if there were limited resources and many persons to be served. I would underscore the fact that we agree with what Mr. Haggerty said. When you have 10 children you spread the resources around equally to those children. There has been a precedent already set in the Mills versus the Board of Education in Washington, D.C., where the judge did say that that's what should be done whenever there are limited resources and a large population to be served. Thank you.

Senator SCHWEIKER. I wonder if you would expand a little bit on your views on de-institutionalization, how you feel it ought to be carried out.

Mr. MAKUCH. Well, I made two points in my statement that de-institutionalization not only means removing individuals who are currently in residential facilities such as State schools and private institutions, but probably more important it means that we should maintain individuals in the community who are presently residing there with their families. We feel that Senate bill 6 and the efforts that we've undertaken in Pennsylvania on the right to education will provide the major program segment needed in order to maintain individuals in the community. We who are in the mental health-mental retardation system are attempting to also establish a system of supportive services in order to assist the education system and the family in order to maintain individuals in the communities.

Senator SCHWEIKER. I wonder too if you in your testimony would just expand on the outline of your definition of a proper monitoring and what you have in mind there.

Mr. MAKUCH. Well, I think the review that was suggested in that provision in Senate bill 6 where the Commissioner of Education would review the commitment procedures and the provisions of programs in the institutions as to whether or not they were appropriate to meet the educational needs. I think that's a golden opportunity for someone at the Federal level to really question whether or not individuals should be placed in residential facilities to meet their educational needs. On this whole point of deinstitutionalization and costs of providing services, perhaps I could provide you with data on our efforts for community care and the cost within our State schools and hospitals.

Senator SCHWEIKER. Thank you very much. I think that would be very useful and we will place it at this point in the record. Now I'd like to call on the Director of the Office of Human Resources, Mr. Francis Coyle.

[The following material was subsequently supplied for the record:]

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SUMMARY OF DATA ON RESIDENTIAL PLACEMENTS

Office of Mental Retardation - Work Sheet

PROJECT 1973-74 Institutional Cost Projections DATE 2-27-73

FACILITY	Proposed Resident Dispersal Balance of 1972-73	Estimated Average Daily Census 7/1/73	Governor's Recommended Operating Budget	Projected Resident Per Diem Cost	Projected Annual Resident Cost	Present Complement 3/1/73	Requested Addition Position 1972-73
Cresson	(-34)	522	$ 7,407,000.	$ 38.88	$ 14,191.	537	107
Ebensburg	(-02)	1000	$ 12,045,000.	$ 33.00	$ 12,045.	990	51
Hamburg	(-16)	807	$ 7,904,000.	$ 26.83	$ 9,793.	552	192
Laurelton	(-13)	407	$ 6,215,000.	$ 41.84	$ 15,272.	440	10
Pennhurst	(-77)	1700	$ 22,474,000.	$ 36.22	$ 13,220.	1483	271
Polk	(-61)	2800	$ 22,295,000.	$ 22.30	$ 8,140.	1019	531
Selinsgrove	(0)	1605	$ 15,312,000.	$ 26.14	$ 9,541.	1155	237
Western	(-12)	635	$ 10,809,000.	$ 46.64	$ 17,024.	704	30
White Haven	(-01)	975	$ 11,019,000.	$ 30.96	$ 11,300.	911	54
Southeastern		200	$ 4,166,000.	$ 57.07	$ 20,803.	*(73	[illegible] *150 74 [illegible]
						[illegible]	[illegible]

Office of Mental Retardation - Work Sheet

PROJECT 1974-75 Institutional Costs Projections DATE 2-28-73

FACILITY	Proposed Resident Dispersal	Estimated Average Daily Census 7/1/74	+15% Projected Operating Budget	Projected Resident Per Diem Cost	Projected Annual Resident Cost	Projected Total Complement
Cresson	(-32)	490	$ 8,518,050.	$ 47.63	$ 17,385.	744
Ebensburg	(-60)	940	$ 13,851,750.	$ 40.37	$ 14,724.	1041
Hamburg	(-48)	759	$ 9,089,600.-	$ 32.81	$ 11,976.	744
Laurelton	(-24)	383.	$ 7,147,250.	$ 51.13	$ 18,662.	450
Pennhurst	(-102)	1598	$ 25,845,100.	$ 44.31	$ 16,173.	1754
Polk	(-168)	2632	$ 25,639,250.	$ 26.69	$ 9,742.	2370
Selinsgrove	(-96)	1509	$ 17,603,800.	$ 31.97	$ 11,669.	1442
Western	(-38)	597	$ 12,430,350.	$ 57.04	$ 20,820.	734
White Haven	(-58)	917	$ 12,671,850.	$ 37.86	$ 13,819.	965
Southeastern	+100	300	(20%) $ 4,999,200.	$ 45.66	$ 16,666.	400
	526	10,125	137,796,200			10,644

Office of Mental Retardation - Work Sheet

PROJECT 1975-76 Institutional Cost Projections DATE 2-27-73

FACILITY	Proposed Resident Dispersal	Estimated Average Daily Census 7/1/75	+10% Projected Operating Budget	Projected Resident Per Diem Cost	Projected Annual Resident Cost	Projected Total [illegible]
Cresson	(-32)	458	$ 9,369,855.	$ 56.05	$ 20,458.	714
Ebensburg	(-60)	880	$ 15,236,925.	$ 47.44	$ 17,316.	1041
Hamburg	(-48)	711	$ 9,998,560.	$ 38.53	$ 14,063.	714
Laurelton	(-24)	359	$ 7,861,975.	$ 59.88	$ 21,856.	450
Pennhurst	(-102)	1496	$ 28,429,610.	$ 52.07	$ 19,006.	1754
Polk	(-168)	2464	$ 28,203,175.	$ 31.36	$ 11,446.	2370
Selinsgrove	(-96)	1413	$ 19,369,680.	$ 37.56	$ 13,709.	1442
Western	(-38)	559	$ 13,673,385.	$ 67.01	$ 24,459.	734
White Haven	(-58)	859	$ 13,939,035.	$ 44.46	$ 16,228.	965
Southeastern	+48	348	(+15%) $ 5,749,080.	$ 45.26	$ 16,519.	400
	[illegible]	9547	$151,831,280.			[illegible]

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Office of Mental Retardation - Work Sheet

PROJECT 1976-77 Institutional Cost Projections DATE 2-27-73

FACILITY	Proposed Resident Dispersal	Estimated Average Daily Census 7/1/76	+8% Projected Operating Budget	Projected Resident Per Diem Cost	Projected Annual Resident Cost	Projected [illegible]
Cresson	(-32)	426	$ 10,119,443.	$ 65.08	$ 23,754.	75[illegible]
Ebensburg	(-60)	820	$ 16,445,879.	$ 54.98	$ 20,068.	1041
Hamburg	(-48)	663	$ 10,798,445.	$ 44.62	$ 16,286.	744
Laurelton	(-24)	335	$ 8,490,933.	$ 69.44	$ 25,346.	45[illegible]
Pennhurst	(-102)	1394	$ 30,703,979.	$ 60.34	$ 22,024.	175[illegible]
Polk	(-168)	2296	$ 30,459,429.	$ 36.35	$ 13,268.	[illegible]
Selinsgrove	(-96)	1317	$ 20,919,254.	$ 43.52	$ 15,885.	[illegible]
Western	(-38)	521	$ 14,767,255.	$ 77.65	$ 28,342.	734
White Haven	(-58)	801	$ 15,054,157.	$ 51.49	$ 18,794.	[illegible]
Southeastern	(0)	348	$ 6,209,006.	$ 48.84	$ 17,827.	[illegible]
	(-[illegible]26)	8921	$163,9[illegible]			

Office of Mental Retardation - Work Sheet

PROJECT 1977-78 Institutional Cost Projections DATE 2-27-73

FACILITY	Proposed Resident Dispersal	Estimated Average Daily Census 7/1/77	+8% Projected Operating Budget	Projected Resident Per Diem Cost	Projected Annual Resident Cost	[illegible]
Cresson	(-27)	399	$ 10,928,998.	$ 75.04	$ 27,390.	[illegible]
Ebensburg	(-118)	702	$ 17,762,349.	$ 69.32	$ 25,302.	[illegible]
Hamburg	(-82)	581	$ 11,662,321.	$ 54.99	$ 20,071.	[illegible]
Laurelton	(-37)	298	$ 9,170,208.	$ 84.31	$ 30,773.	[illegible]
Pennhurst	(-127)	1267	$ 33,160,297.	$ 71.70	$ 26,171.	[illegible]
Polk	(-275)	2169	$ 32,896,183.	$ 41.55	$ 15,166.	[illegible]
Selinsgrove	(-194)	1123	$ 22,592,704.	$ 55.12	$ 20,119.	[illegible]
Western	(-65)	456	$ 15,948,635.	$ 95.82	$ 34,994.	[illegible]
White Haven	(-118)	683	$ 16,258,489.	$ 65.22	$ 23,805.	
Southeastern	(0)	348	$ 6,705,726.	$ 52.79	$ 19,268.	
	1043	[illegible]	[illegible]			

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1973-74

Institutional [illegible]

~~[illegible]~~ Type of Home	% of Yearly Group Home Population	Estimated Average Daily Census	Projected Resident Per Diem	Projected Annual Cost Per Resident	Projected Operating Budget
1. Life Support (Medical)	2%	25	$ 25	$ 9,125	$ 228,125
2. Infant Nursery	1%	13	20	7,300	94,900
3. Child Development	20%	256	25.68	9,373	2,399,488
4. Habit Shaping (Psychology)	5%	64	34.25	12,501	800,064
5. Behavior Modification	3%	38	27.40	10,001	380,038
6. Training Model I	15%	192	16.44	6,001	1,152,192
7. Training Model II	30%	383	16.44	6,001	2,298,383
8. Training Model III	20%	256	12.79	4,668	1,195,008
9. Crisis [illegible]	4%	51	25	9,125	465,375
Totals:	100%	1278	$203	$74,095	$9,013,573

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1974-75

Yearly Population - 10,000, to be reduced by 30% - 3100 into Group Homes first [illegible]
[illegible] into Group Homes from Community
[illegible] into Group Homes over five year period [illegible]

[illegible] Group Home Population

[illegible]	% of Yearly Group Home Population	Estimated Average Daily Census	Projected Resident Per Diem	Projected Annual Cost Per Resident	[illegible] Budget
1. Life Support (Medical)	2%	50	$28.25	$ 9,581	$ 479,050
2. Infant Nursery	1%	26	21.00	7,665	199,290
3. Child Development	20%	512	23.97	8,749	4,479,488
4. Habit Training (Psychology)	5%	128	32.53	11,873	1,519,744
5. Behavior Modification	3%	76	25.68	9,373	712,348
6. Training Hostel I	15%	384	16.44	6,001	2,304,384
7. Training Hostel II	30%	766	16.44	6,001	4,596,766
8. Training Hostel III	20%	512	12.79	4,668	2,390,016
9. Crisis [illegible]	4%	102	26.00	9,490	967,980
TOTALS:	100%	2556	$201.00	73,401	17,649,066

1975-76

Institutional Population = 19,651, to be reduced by 30% [illegible]

[illegible] Group Home Population [illegible]

TYPE OF HOME	% of Yearly Group Home Population	Estimated Average Daily Census	Projected Resident Per Diem	Projected Annual Cost Per Resident	Projected [illegible] Budget
1. Life Support (Medical)	2%	75	$27.56	$10,059	$ 754,425
2. Infant Nursery	1%	39	22.00	8,030	313,170
3. Child Development	20%	768	22.26	8,125	6,240,000
4. Habit Shaping (Psychology)	5%	192	30.82	11,249	2,159,808
5. Behavior Modification	3%	114	23.97	8,749	997,386
6. Training Hostel I	15%	576	16.44	6,001	3,456,576
7. Training Hostel II	30%	1149	16.44	6,001	6,895,149
8. Training Hostel III	20%	768	12.79	4,668	3,585,024
9. Crisis Assistance	4%	153	27.00	9,855	1,507,815
TOTALS:	100%	3,834	$199.00	$72,737	$25,909,353

[illegible] Population – 10,651, to be reduced by [illegible]

* [illegible] Group Home Population

TYPE OF HOME	% of Yearly Group Home Population	Projected Average Daily Census	Proposed Resident Per Diem	Projected Annual Cost Per Resident	[illegible]
1. Life Support (Medical)	2%	100	$28.94	$10,563	$1,0[illegible],300
2. Infant Nursery	1%	52	22.50	8,213	4[illegible],076
3. Child Development	20%	1024	22.26	8,125	8,3[illegible]
4. Habit Shaping (Psychology)	5%	256	30.82	11,249	2,8[illegible],744
5. Behavior Modification	3%	152	23.97	8,749	1,[illegible],848
6. Training Hostel I	15%	768	16.44	6,001	4,6[illegible],768
7. Training Hostel II	30%	1532	16.44	6,001	9,1[illegible],532
8. Training Hostel III	20%	1024	12.79	4,668	4,780,032
9. Crisis Assistance	4%	204	[illegible]	10,0[illegible]	2,0[illegible],752
TOTALS:	100 %	5,112	207.00	73,607	34,643,052

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[illegible] 40,531, [illegible]

[illegible] Production

[illegible]	% of Yearly [illegible] [illegible]	Estimated Average Daily [illegible]	[illegible]	[illegible]	
1. [illegible] (mail)	2%	145	[illegible]	[illegible]	[illegible]
[illegible]	1%	65	23.00	[illegible]	[illegible]
3. [illegible]	20%	1200	35.26	8,135	[illegible]
[illegible] (Regulated)	5%	330	30.83	11,349	[illegible]
4. [illegible]	3%	190	23.57	8,759	[illegible]
[illegible] I	15%	950	16.45	6,007	[illegible]
7. [illegible] II	30%	1915	16.35	6,001	11,[illegible],515
8. [illegible] III	20%	1200	13.95	4,663	[illegible]
9. [illegible] Registered	4%	255	[illegible]	10,220	[illegible]
[illegible]	100%	6300	$404.00	$74,500	$[illegible],100

Senator SCHWEIKER. Mr. Coyle, would you care to summarize your salient points as well as responding to any previous things.

Mr. COYLE. Good morning, Senator. Thank you for having me and my assistant, Gweneth Zarfoss, before the subcommittee this morning.

I would rather have the statement that we submitted be entered into the record, and I will comment on one of the points that has been mentioned by various speakers this morning and that is the point of monitoring. One of the reasons why the Governor's office is assigned to sit on the State task force is not so much for the technical expertise that we can bring to the Task Force, although Mrs. Zarfoss has many years of experience in the field of mental retardation, but also to see where we can assist the task force in their dealings with other agencies and to see where we can facilitate interagency cooperation. Also it gives us the opportunity to review how well the implementation is proceeding.

Now, several criticisms have been made, and in our judgment rightly so, about the implementation of the Consent Decree to date. I say this in the sense and with the perspective that all human systems are capable of improvement and are subject to criticism. And it has been the impression of the Governor's office to date, that the department of education together with the department of public welfare, but education in particular, has exercised leadership, has delved into this case, and has made what we consider in some instances heroic efforts to do the things the court and the Consent Decree says they should do. There are obviousy soft points and weak spots and more can be done, but we are totally satisfied and I think that our department of education can point with pride to the efforts that they have made.

I think one of the areas that can be improved upon and where perhaps we could do more is to increase the type and degree of communication that the State task force has with local task forces in the intermediate units around the State. I believe that the reorganization suggested by the department for continued implementation of the right to education is attempting to deal with that as well as other points and other criticisms raised by the plaintiffs.

I have nothing more to add to that, Senator, unless you have questions.

Senator SCHWEIKER. Thank you very much. We'll call now on the assistant director, Mrs. Gweneth Zarfoss. Gwen, I would like to have your comments.

Mrs. ZARFOSS. Senator, I'm happy to see you again, it's a pleasure. And I'm glad that Mr. Coyle is allowing me to give you our feelings about the entire program, which really we feel has grown beyond anything I ever expected. In 1902 you will remember that Peter Weldner started a memorial school for handicapped children and he endowed it as a private school. It was taken over by the Philadelphia school system in 1953 and through 1956 we worked on legislation.

I can well remember when we were proud to have 47,000 handicapped children in the public school classes. Then it jumped to 130,000. And this morning you will remember they were talking over 200,000.

The right to education program to me was a great step. It was one that I never thought would begin in Pennsylvania, and if you look at our handicapped population, Senator, it exceds the handicapped population of 19 other States. We're talking in terms of masses when we think of our Commonwealth. The right to education program was an innovative program, one that was fought bitterly. Many people didn't want it because of its expense, because of the effort it would require. But I have seen within the last 2 years, and I consider them preliminary—a stage of beginning. Many things occurred throughout the State that I never thought would happen.

I agree with everyone here and I'm sure that Commissioner Carroll will too, that we must monitor. Granted that the local school district is finally responsible for the education of the child. I still believe at the State level we have a great responsibility to not only have criteria and hold to that, even for financing, and for evaluating our teachers. Otherwise I do believe that there will be very few school districts that will provide uniform programs and will assist the teachers themselves, who are really very good and trying hard. Frankly, I would find it most difficult to handle some of the programs that they are handling now. I can list individual cases where it would make me tremulous to go into a classroom.

You have included monitoring in your bill, and I believe this is important. You have included criteria, and I thank you for it. There is something that specifically comes to my mind that you yourself mentioned this morning, and that is the response from the private agencies. Not just PARC, and you will remember that 10 years ago when you and I were working on the comprehensive mental health-mental retardation plan and you worked so hard to get our Pennsylvania Mental Health-Mental Retardation Act passed, we reiterated and reemphasized at that time the importance of having public community support and participation of income. It's for this reason that I take the liberty of making a request——

Senator SCHWEIKER. That's why we're here.

Mrs. ZARFOSS [continuing]. In fact two requests. One, we are hopeful, all of us here today, that this law will be passed. And even now perhaps there may be some people in Washington that are thinking about guidelines, national guidelines. I believe that Pennsylvania has made national history in special education. I would respectfully request that as these guidelines are developed that educators and officials from the Commonwealth of Pennsylvania and other States be invited to come to Washington to help formulate those guidelines. Because, Senator Schweiker, we have made progress in our right to education program, you've heard that this morning, but we've made grave errors. We have failed in many respects because we've been chartering a new course. We now have an opportunity to go further and this bill is going to do for us what it won't do for many States, because it's going to be a period beyond that which some other State will face.

The second request I have is something that concerns me very much. I've always been involved with the planning and programs and hopes that we would not break handicapped people up into parts, but that we'd have a lifespan plan and program for handicapped right through because we believe it's their right. You have a Developmental Disabilities Facilities and Construction Act of 1970. We now have the most recent Federal act, Vocational Rehabilitation Act of 1973. With this one, the joint three working in cooperation, I honestly believe that you and I will see a curve in the next 10 years, what we tried to do 10 years ago.

Senator SCHWEIKER. Well, I certainly appreciate your very pertinent comments and you certainly will have my full support and effort in achieving both of those requests.

Let me also say that I certainly concur about the input into the guidelines. This is a continuing battle in Washington and this is one that our committee has tried in every area of legislation that it is responsible for to see that legislative input as well as feelings are provided. So I certainly concur with that and I think that's a very pertinent point and particularly in view of the fact that Pennsylvania has done so much, it would be very foolish not to take that into consideration. That's one of the reasons the subcommittee has agreed to hold hearings here, because they feel they can learn a great deal from the leadership and work of the Commonwealth and your respective private groups as well have done. So I assure you you'll have my support on that.

I would like to ask a couple questions of the panel and anybody that wants to respond may. One is that the terms of the Masters are up. What happens now? Who might best respond to that picture?

Mr. CARROLL. I'll take a crack at it to begin with. First, we received a great deal of assistance obviously from the Masters and there's a recommendation in their report that the court retain jurisdiction for a period of time. We support that in the Department of Education for two reasons, the first has been enumerated here in that there's a lot yet to be done and the prodding of the court is useful in getting that done at the State level. In the second instance, it's also useful in helping us deal with school districts and intermediate units. So we would hope that the court would retain jurisdiction. We have not heard anything about that yet so we're going to proceed on the worst assumption that the court would not retain jurisdiction. I say that we as a State Task Force plan to stay in business. We plan to keep uppermost in the minds of people this particular problem and proceed with the spirit of the consent decree, which really is one that says we're going to get on with the job.

We ideally do not need the court and I suspect that if the court doesn't retain jurisdiction we'll still proceed to move as rapidly as we can. We do hope, however, that the court will retain some jurisdiction.

FUTURE OF RIGHT-TO-EDUCATION PROGRAM

Senator SCHWEIKER. What about the Right-to-Education program if the Masters services are not renewed?

Mr CARROLL. I'll take a crack at that one too if I might. There's some disagreement presently about the status of the Right to Education Office. I think there are honest disagreements but let me say that there has to be somewhere in State government an office concerned with the advocacy of the rights for the mentally retarded and that

that Right to Education office in some form has to be retained and given the adequate clout to do its job.

One of the main criticisms of the Right to Education Office in the past was that it apparently was too much under the thumb of existing governmental agencies and not free to do the things that it should do. That is a problem on the one hand, but on the other hand when all of the legal and financial authority to carry out their mandates rests in other departments it's a fine line to decide how much freedom and autonomy that group should have. But the Right to Education Office, that function obviously in some form has to be retained. The disagreement is over whether it should be retained in the present form and strengthened, or whether it ought to be more closely involved in the organization-administration of particular programs. I think those are areas where people can agree or disagree civilly about that.

Senator **Schweiker**. I guess we touched on this somewhat so I don't know if you want to say anything further but what happens if the Masters are not continued? What about the implementation of monitoring and other evaluation programs?

Mr. **Carroll**. I think the Masters will also agree that monitoring is impossible for them to do. It's impossible for us to do alone and the local task forces, so I think what we have to do is assume that that responsibility will come maybe in three ways. We'll be monitoring statewide and the local forces locally, but in addition, a different sort of evaluation system has to be initiated. A statewide system that would provide us with a look at the product of what we're doing. And I think those three together with or without the Masters would be enough to at least start collecting information that we need to see whether we're on the right track.

Senator **Schweiker**. Gwen.

Mrs. **Zarfoss**. There's one thing I think I ought to bring to your attention. There were many, and the Director of the Right to Education can check me on this, but there were at least 300 requests for due process, of which I would judge approximately half proceeded through the Masters. And that is a wonderful thing because if at the local level the local task force, the parents, the teachers all get together, many, many times it does not need to go through due process. It's a misunderstanding sometimes and it's always a very emotional thing for the parents. But this could be handled very well if we had good training and we wouldn't need to continue to always be under the court's supervision.

Mr. **Carroll**. May I just say another thing, sir, I gather from your line of questioning that you are concerned about the spirit of what would happen so to speak if the court would say suddenly just remove all jurisdiction. I'm not sure that I came on clearly enough to say to you that with or without that jurisdiction we plan to proceed. With or without Senate bill 6 or H.R. 70 we plan to proceed. Now let me say that Senate bill 6 and H.R. 70 would make it possible in the next 2 years to get the job done for all handicapped children rather than wait 5, 7, 10 or however long it would take. And so what we're saying to you is we have the commitment. The issue of how fast now is in hands other than ours.

Mr. Polloni. I think, Senator, if I might add here as well, that basically we're looking to the Department of Education in its delivery of these types of services. Without the integrity and the responsiveness of the Department of Education I think we were very much lost anyway. But we at the same time feel that it is always correct to have a check-and-balance system and the opportunity to keep people on the lines of responsibility where they belong.

PROVISIONS OF THE CONSENT DECREE

Senator Schweiker. Just a couple more questions and then I think we can let you go. Does the consent decree include all costs for diagnosis and evaluation, for example, health related services, and if not how is that taken care of?

Mr. Carroll. If I recall correctly it is not in the consent decree. I don't really think for Pennsylvania it is needed. We provide approximately $15 million of State money each year through our Department of Health for school medical services and those services would be available if needed for this particular diagnosis. So it is not included in our special education clearly, it is included in our health services costs which are appropriated in a different way.

Mr. Polloni. And I think here, and Dr. Makuch can answer this as well, but as was indicated earlier, education is not to be considered in isolation. One of the things that the consent decree does address itself to is the Department of Welfare as well as the Department of Education. The Department of Welfare covers many aspects of social services and health services to the mentally retarded person. The COMPILE document suggests the bringing together of the many agencies within the community who address the needs of an individual. So it's implied within our consent agreement and attendant documents that various agencies will be involved and will provide certain kinds of services. Under the Mental Health-Mental Retardation Act the base service unit within the community has the responsibility to provide diagnostic workups and evaluation services as it relates to needs other than educational for that child.

Senator Schweiker. When they got into the matter of identification and evaluation in terms of specific procedure, did it include a cost referral from different agencies or not? How was the specific procedure set up for identification evaluation and what role did different agencies play?

Mr. Makuch. You heard mentioned earlier, Senator, the local task force which is a group that is chaired by the executive director of each intermediate unit. That group is composed of persons from the Association for Retarded Children, from our Mental Health-Mental Retardation System, the school system, and any other party that is needed to comply with the mandates of the right to education agreement.

When we went through the process of identification-location one of the things that local task forces did was to contact any and all relevant agencies that may have had contact with mentally retarded persons and request that information from those agencies be channeled into that local task force. So just by adopting that process there was a cross-check between agencies as well as the school system of individuals who were known by the school system.

TIME NEEDED TO DEVELOP STATE PLAN

Senator **SCHWEIKER.** How much time would be needed for a State to develop a total plan from beginning to end to bring appropriate services to all the handicapped children in the State? I think this is a key question because in the national bill, of course, you would obviously be going into areas where virtually nothing has been done. In view of Pennsylvania's experience what kind of a time frame realistically should we be talking about in this legislation?

Mrs. **ZARFOSS.** I said a year and the Commissioner said, "Oh, no, Gwen."

Mr. **CARROLL.** I was thinking of some experiences I've had in working with the Office of Education in evaluating State departments in other States, and it would occur to me that in some of our sister States they are much less fortunate than Pennsylvania and that to say to them, identify all of your handicapped children, put them in appropriate programs, have teachers and facilities and what have you in place, that a minimum of 5 years would seem to me very optimistic. I just don't know how you could expect them to do it—well, what will happen is you'll have the same situation we all faced in 1965 when through the generosity of the Congress great sums of money were placed in the educational establishment and we weren't prepared to handle them and as a result it took 2 years to even begin to get within the intent of the legislation. So I'm not as optimistic as Gwen about some other places. But that doesn't mean we don't start now; we have to start.

Mr. **POLLONI.** On the other hand I think the fact that many of the other States have gathered data and have initiated programs of identifying, locating, and evaluating their children is a heartening fact and could well be a point that perhaps the majority of the States are already doing this and that we could expect a shorter period of time for full implementation across the Nation.

Mr. **CARROLL.** Excuse me. I just based part of what I'm saying on the pipeline for preparing people of the minimum of 4 to 5 years if you start with new people. I realize there's considerable retraining that can go on in certain areas where we have surplus of teachers and what have you, but just the whole question of preparation of faculty alone is a complicated thing.

STATE CARE FOR NONSCHOOL HANDICAPPED

Senator **SCHWEIKER.** One other question I have is how does the State provide services for infants and preschoolchildren and adults over school age? How does that relate, if at all, to this school age problem?

Mr. **POLLONI.** I'd be willing to respond. The setting is quite natural to proceed to lowering the age of entry of the handicapped child into the system. The State of Massachusetts has just passed a 1972 law for the implementation by September of 1974 for ages 3 to 21 entry into the system. The State of Virginia has spoken of ages 2 to 21. On the basis of Pennsylvania's leadership I would think the next natural step would be a very early entry into developing legislation to provide an earlier entry into the system for handicapped children.

Mr. COYLE. Senator, our consent decree requires us to provide the same program of education for retarded children as it does for normal children. That means that in many of the intermediate units, intermediate districts across the State, the entry age does vary some. In some areas there are kindergarten programs and in other areas there are not. I think that the concept is beautiful to extend this thing to children at a very young age, but one must also take into account the other costs attached to that, not just for the education of retarded children but for the education of normal children. When you think about extending the program universally you are talking about quite an escalation of costs. One time we did a small informal study to see if under some of the formula grant programs the State would prosper by designating or mandating kindergarten statewide. This would increase the population enough to have an impact on the formula. This was done 2 or 3 years ago. We found in that small informal study that it was not cost effective to go ahead and mandate it, but rather to leave it as a local option in effect. So there are tremendous costs associated with this that I don't think can be ignored when we're just talking about education of the retarded.

Senator SCHWEIKER. Anyone else?

Mr. POLLONI. However, the fact is that this whole action began in a look at the institutional setting and the reasons why people were in our public institutions. And one of the strong arguments is that they were not provided adequate training programs, certainly not early enough in their life, certainly not during school age periods of time, and out of frustration many times parents found the necessity of placing their children into institutional settings. With the availability of programs at a much earlier age certainly the rationale for Virginia's argument and legislation, New Jersey's legislation, Massachusetts' legislation, and I believe we can go across the country into a number of other States that are beginning to enter their more severely handicapped into the system at a much earlier age. A variety of literature and data that is coming to the forefront demonstrates very clearly that the earlier the child enters the system—and it seems to me it should be the educational system for continuity purposes—the less likelihood of the need of long-term institutionalization, but rather a very good likelihood and a very good potential for true habilitation into his community. Thus, it is very cost effective.

Senator SCHWEIKER. Thank you very much.

[The prepared statement of Mr. Polloni follows:]

PREPARED STATEMENT OF MR. PETER POLLONI, EXECUTIVE DIRECTOR, PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS

Mr. POLLONI. Approximately one year ago, Mr. Brown from the Pennsylvania Association for Retarded Citizens appeared before this distinguished panel to present testimony on Senate Bill 6, which provides the potential for improved educational services to the handicapped children of this Nation.

At this time Mr. Brown referred to the Pennsylvania case and interpreted its impact and the resulting concerns that this organization had. Since that testimony was given to you, some changes have taken place and we would like to outline these changes for you.

After almost three years of experience with the Right to Education Consent Order and its implementation, we offer the following information and suggestions:

The final consent order of the Court was rendered in May 1972. To this date there is still resistance on the part of some school districts to implement the order either in spirit or letter. Pennsylvania has been considered a progressive state regarding educational services and fiscal commitment of support and yet the Right to Education action has identified approximately 16,000 persons who were previously denied a free public education by the Pennsylvania Department of Education and its local school districts. Recent census material taken from door-to-door review has identified additional numbers of children, but suggests an additional 3,000 school-age children might be identified across the Commonwealth. I will not be surprised if larger numbers are identified as more detailed census materials are available.

From Pennsylvania's experience, I would say that it is absolutely imperative that aggressive steps be established involving concerned representatives and parties interested in the handicapped to assure continuous census to identify the handicapped and to assure the provisions of appropriate education and training programs; however, this identification process must be safeguarded so that its integrity can be guaranteed.

1. IDENTIFICATION

Although the Pennsylvania program for identification of the mentally retarded was extensive and involved not only the Department of Education but also the Association for Retarded Citizens, the Department of Public Welfare and other interested groups, there are still mentally retarded individuals who are in mental health facilities and child welfare shelters, penal institutions or elsewhere who have still not been identified. The program of identification was also limited in that it focused only on the mentally retarded and not on all handicapped.

2. QUALITY OF EDUCATION

The location of children is only a minuscule part of the effort to educate. The major portion of the Pennsylvania action and the important wording of Senate Bill 6 is in the phrasing of "free, appropriate public education and training." Most of the newly identified children have been the more severely handicapped. Initially in the establishment of classes, a lot of apprehension and pessimism prevailed because many educators felt that traditional education was not appropriate to the more severely handicapped mentally retarded person. Therefore, in Pennsylvania a Right to Education Office was established to assist in identification of children, but secondly and more importantly, providing a training section to develop training seminars and workshops to retrain teachers in development curriculum and methods of teaching for the more severely handicapped child.

This program has achieved some levels of success but is still far from adequate. The four desk officers, established upon the suggestion of Thomas Gilhool, Esquire, were charged with the responsibility to monitor programs and services, has dwindled to two and their responsibility has been altered making true monitoring unobtainable at this time. It has been clearly evident that teaching institutions must provide new courses of study and techniques to prepare personnel to meet the new challenges demanded by free public education to all handicapped children. Yet, the action on the part of the universities and colleges has been very slow. Problems still remain because of the inadequacy of teachers andœor class settings to meet standards of appropriateness for some children.

Some school districts still attempt de facto exclusion practices rather than seeking ways to develop appropriate areas and settings to create the atmosphere for learning and training. With the encouragement of additional federal dollars, perhaps many of these challenges will be more readily met. It has been interesting to observe the programs that previously had been considered impossible or impractical had now been demonstrated to be highly productive.

The Pennsylvania case provides for a zero reject concept. There are numerous testimonies already on record to support this premise that every child must be afforded a free public program of education and training. We are extremely encouraged that the language of Senate Bill 6 recognizes the premise of zero reject in its outline for providing individualized written programs for all children, and we fully endorse and support this position.

3. TRANSPORTATION

Within the Pennsylvania educational code, transportation shall be provided as it is available to all other children, it shall equally be provided to the handicapped. As we all know, transportation is an extremely costly item and has often been held up as the reason why handicapped individuals cannot be served. This excuse still arises in Pennsylvania, but is less readily accepted at this point.

We think that it is important that it be clearly understood in every part of the Nation that transportation is an integral and inseparable part of providing an appropriate education to individuals. We take pride that it is implied that this statement is implied in Senate Bill 6. If special equipment is needed, such as special lifts, seat belts, etc., that would be included as excess costs. However, we feel that problems still arise because decisions on transportation are still being made on the basis of administrative concerns rather than on the appropriateness of the transportation to the child, and we caution this panel on that particular issue.

4. DUE PROCESS

As of February 25, 1973, 116 Due Process Hearings have been held throughout the Commonwealth resulting in 106 decisions. 167 hearings had been cancelled. One of the things that we have seen in the hearing process is the need for additional training for the hearing officers, and the need for the support for the parents.

This need has been pointed out by the Masters and by PARC, suggesting that this system is much more complicated than we had originally thought. However, we still firmly endorse the provision in Senate Bill 6 for Due Process Procedures for we have found in Pennsylvania that the Due Process Procedures have opened many lines of communication and aided in finding appropriate solutions of education for many children without the necessity of formal court hearing.

5. MONITORING OR ADVISORY ROLES

Within the Pennsylvania system, local task forces have been established which are charged with the responsibility of review of the identification, location, and evaluation process, and to marshall together the community resources to assure appropriateness of the education and training programs of each mentally retarded person.

To date, the role of the local task force has not been sufficiently clarified to allow effectiveness in the monitoring process. Both the Masters and PARC have pointed this out. There is a State Task Force that is advisory to the Secretary of Education with representatives of the Governor's Office, the Department of Public Welfare, the Department of Education and Consumers, the Pennsylvania Association for Retarded Citizens. This group has also been less than effective to date, but is in the process of becoming more and more effective. We feel that this concept is a must for successful programming of handicapped individuals and support this particular concept in the Senate bill.

6. COST ACCOUNTING

In Senate Bill 6, under Eligibility, Section 6 (b), there were provisions for reporting programs and procedures for expenditures of funds. This particular area has been one of great concern to the Pennsylvania Association for Retarded Citizens. There is much evidence at this point to indicate a lack of clear accountability. For example, in new construction, rooms are identified to be used for special education purposes. Soon after new construction is completed, it is determined that the rooms will be needed for regular classes and special education classes are relegated to some less desirable positions, like the furnace room.

Or, on the other hand, specialists such as speech therapists and remedial reading teachers or others are paid completely from special education funds while, in fact, the majority of their time is assigned to areas outside the special education realm. The education and training requirements of handicapped are very real and they must have every possible resource applied to them for the process of education to enable them as students to achieve their greatest potential. Therefore an accounting of capital expenditures as well as personal cost on a specific per capita basis must be required to encourage the appropriate application of resources to the handicapped.

Although we have outlined many problems, we heartily support all provisions within Senate Bill 6. In fact, without Senate Bill 6, many more problems will continue to plague the education of the handicapped. We feel that we have learned a great deal through our experiences in Pennsylvania and we will be happy to answer any questions that you may have of the Pennsylvania experience. Thank you.

ADDENDUM STATEMENT

Mr. POLLONI. In anticipation of the expiration of the term of the Masters, the Pennsylvania Association for Retarded Citizens has reviewed the experience of the first year of implementation of the Right to Education Decree with a view toward modification of the existing structures for implementation and institution of remedial efforts to correct recurrent impediments to complete enforcement of the decree throughout the Commonwealth.

In brief summary, PARC suggests a two-fold structure of responsibility for monitoring and enforcing continued implementation after the expiration of the Masters' term. Within the existing structure of responsibility among State agencies, PARC suggests that the authority and responsibility of the Right to Education Office be expanded and that the office report directly to the Secretary of Education either through a Deputy Secretary or through the Commissioner of Special and Compensatory Education. The Right to Education Office would have primary responsibility for monitoring the integrity of implementation throughout the Commonwealth and for insuring enforcement of the rights of retarded children of school age.

The responsibility of the Right to Education Office would be supplemented by the efforts of the Local Task Forces and the State Task Force, with the responsibilities and authority of the Local Task Forces redefined in accordance with the previous suggestion of PARC. The Local and State Task Force structure would provide the Right to Education Office with a viable mechanism for additional monitoring at the local level and for communication of problem areas, as well as assisting in the resolution of impediments to implementation through the authority and influence of the members of the State Task Force.

In addition to the restructuring of the Right to Education Office and of the Local and State Task Forces, PARC is concerned over the need for additional training of Due Process Hearing Officers and for modifications to the due process notice and evaluation forms which are distributed to parents at the time of a change in educational assignment.

The recommendations of PARC are set forth in greater detail in the attachments to this memorandum. These recommendations are advanced for the consideration of the Masters in their final report to the Court, and as a basis for discussions between PARC and the interested State agencies with respect to areas of common concern and agreement.

Proposed organizational structure to insure continued implementation to right to education

I. *Location and Responsibility of State Task Force*

1. The State Task Force for assuring the right to a free public education to all school aged mentally retarded persons, shall be a representative group of four parties representing the Department of Education, the Department of Welfare Office of Mental Retardation, the Governor's Office and the plaintiff, the Pennsylvania Association for Retarded Citizens.

2. The State Task Force shall be free standing and shall have ultimate responsibility for monitoring and assisting in implementation of the amended consent agreement and of COMPILE throughout the Commonwealth of Pennsylvania by using the instrumentalities of each agency of government represented on the State Task Force.

3. The State Task Force shall provide guidelines for the Local Task Forces and shall use the instrumentalities of the Right to Education Office to accomplish its responsibilities by directing the Right to Education Office to carry forth specific tasks, or to gather certain data germane to the evaluation of the level of implementation.

II. *Responsibilities of the Department of Education*

1. The ultimate responsibility and authority to assure a free public education appropriate to the educational needs of each school aged mentally retarded child shall lie with the Secretary of Department of Education.

2. The Right to Education Office shall be primarily an instrumentality of the Secretary of the Department of Education to provide the necessary assistance to Education Action. The Right to Education Office shall also support the tasks of the State Task Force.

III. *The Right to Education Office*

1. The Right to Education Office shall report directly to the Secretary of Education through his designated officer whether the Deputy Secretary or the Commissioner of Basic Education. The level of reporting and responsibility shall not be less than to the Commissioner.

2. The Right of Education Office will maintain field officers who will review the continued implementation of the amended consent agreement in every Intermediate Unit area within their jurisdiction and the School Districts therein.

a. The field officers will review requests for due process hearings and assure their implementation.

b. The field officers will review problems originating in intermediate unit areas or within Local Task Forces, and will report the problems if unresolved, to the program director of the Right to Education Office as well as, to the State Task Force.

c. The field officers will also be responsible for visiting and reviewing the suitability of the facilities being used as classrooms for the mentally retarded. This will be considered an extension of the responsibilities of the Department of Education, but in those instances where there are substandard conditions and facilities, the field officers will report these immediately to the Director of the Right to Education Office and subsequently to the Deputy Secretary and Secretary of Education. Corrective action shall be initiated immediately to encourage a better learning environment for each of these.

3. The Right to Education Office shall also carry out tasks to implement the amended consent agreement as assigned by the State Task Force as it meets from time to time.

4. The Right to Education Office will be responsible for and institute a system of effective monitoring of all cases involved in the Right to Education. All placements and reassignments will be reviewed annually to determine progress and appreciativeness of the placements.

IV. *Responsibilities of the Department of Public Welfare*

1. The Secretary of Public Welfare shall direct the supervisors of program staff with residential facilities and community programs for the mentally retarded to cooperate fully with the Department of Education and its instrumentalities in order to provide the appropriate program of education and training to all school aged mentally retarded persons wherever they may reside within the Commonwealth.

Critique of the recommended changes in the due process and evaluation forms

The proposed changes recommended by the REO in relation to the evaluation forms are needed, and especially those forms that give medical information about the child. The recommendations made by Dr. Allen and Mr. Knapp that the child's medical history be included in the child's health record is something that should be common practice. Hopefully when such information is interpreted for use in the classroom, this information will be in the teacher's file.

We are disappointed, however, that the REO has not gone beyond the information to be gathered to what happens after the evaluation has been completed, that is, the decision-making processes for arriving at the appropriate placement. It has been our experience that this process leaves a great deal to be desired in the way of parent involvement and involvement with the local school district in which the child resides. We cite these conditions and suggest they are significant to warrant some changes.

A child's educational experiences, to be productive, depend upon good communication between parents and school. This begins with the first point of entry into the educational institution, i.e., the local school district. As a result of certain children being served by intermediate units or other districts, local school districts have become more segmentary where special education is concerned than ever before. Often they tend to lease services for the mentally retarded from schools and intermediate units, except perhaps for Pittsburgh and Philadelphia. This is especially so in the case of the trainable and severely retarded child. As a result, the local school district in which the child resides and the parent has a voice, has had very little involvement with parents or the child in the placement process or with the child's given program, except for a hearing.

Often the retarded child is placed in a program in another town, perhaps a distance of 20 miles away, and it is difficult for the parents to communicate with the teacher or visit the school. To contact the supervisor of the program in the I.U. may also be difficult, for the office is in another town miles away. Furthermore in many instances local school districts do not have their own school psychologist and those who are available for the I.U. are overworked and have little time to spend with children or for counseling. Yet, psychologists give information of a very personal nature to parents who, in turn, find them inaccessible when needed. These services are most valuable, but to be effective, they should function as consultants to others who may be of valuable assistance in the proper placement of the child; specifically the local school district's counselor. In light of these conditions, we offer the following recommendations.

Consider the following changes in initial placement and transfer of educational assignment and notification of right to Due Process:

1. Upon referral from the local school district or other sources, or on request from the parents for evaluation, the psychologist will evaluate the child according to recommended stipulations in the new forms. Hopefully, part of this activity will incorporate a visit to the child's home, having a two-fold purpose. First to identify evidence that may contribute to the child's learning process and second, to give parents information about the child's need for special education.

The Training of Hearing Officers

The hearing officer is scheduled for a hearing without knowledge of the existence of programs in the district, without any knowledge of the child, but with a framework of internal bias of his own. To date there has been little consistency in trying to deal with this particular bias.

Experiences of hearing officers and interpretations of other people have led us to believe that the hearing officer is to enter the situation with as little prior knowledge of the situation as possible and that he is to make decisions on appropriate education for the child based on findings of facts presented to him during the hearing. We feel that this is an impossible job to accomplish in the context of a hearing. It is impossible to understand from a description of that which exists in the school district. It is impossible to understand that which is unique about a particular child with only a description. We feel that the hearing officer should be familiar with what is in fact available educationally in the community and what is in fact unique about the child. To have knowledge in both these areas available prior to the hearing is not a biasing factor if one looks at the process in terms of that child and that child only. In our experience it becomes quite clear that ignorance is not bliss and that a hearing officer's first and only duty is in relation to that individual child.

The inconsistency in the conduct of the hearings seems to point to a weakness in training. It has been said that the inconsistency is necessary so that the hearing process is flexible and relates to the individual child. Since many of the hearing officers do not even have any contact with the child it is difficult to grant this as the reason for its inconsistency.

At this point our suggestions on training for the hearing officers would include four, three-day training sessions spread out over a period of four months. The first should deal strictly with the legal ramifications and interpretations of the hearing process and the consent agreement to be conducted by the Deputy Attorney General and the Attorney for PARC. This suggestion comes primarily from the concerns stated by the Right to Education Office and by others involved that the most frequent errors made in the transcripts of hearings were errors in law. The contents of the first session would deal specifically with: (1) the Consent Agreement, (2) the Attorney General's Opinions and (3) School Law.

The second session should deal specifically with pinpointing appropriate programming. This session should be conducted by recognized experts in the field of behavior modification and ascriptive programming.

The third session should deal with getting at personal aspects of the child through short interviews prior to formal hearings. This session should be conducted by recognized experts in the field of personal assessment and counseling and guidance.

The fourth training session should deal specifically with programs available in each of the Intermediate Units. This should be conducted by supervisors of special education programs in the Intermediate Units.

We feel that the hearing officers at present are not equipped to deal with the complexities involved with assessing appropriate programs for a child without much more backup provided. We suggest that the training sessions would do much to approximate the conditions whereby the hearing officers can fulfill their responsibilities. Since the hearing officer system is so new we would suggest that the decisions be researched and a finer determination be made of errors in the hearing officers' conduct and in the information upon which the hearing officers' decisions have been based. To date we know of no consistent, uniform study of the characteristics of the hearing officers and the implications that they have on the types of decisions that have been made. We know of no attempts to follow up hearing officers' recommendations to see if they have been implemented. We therefore suggest that such research be carried out in a timely fashion so that adjustments may be made to insure efficiency and appropriateness in the hearings.

[The prepared statement of Mr. Makuch follows:]

PREPARED STATEMENT OF GARY J. MAKUCH, DIRECTOR, BUREAU OF CONSULTING SERVICES

Mr. MAKUCH. At the present time over 15,000 of Pennsylvania's mentally retarded citizens are housed in residential facilities such as State schools and private institutions.

A major goal of the Department of Public Welfare, Office of Mental Retardation is deinstitutionalization. Deinstitutionalization means seeing that those mentally retarded citizens currently residing with their families remain in the community, as well as seeing that those persons residing in residential facilities are returned to the community.

Research has revealed that one of the factors which contributes to institutionalization of mentally retarded persons is a lack of appropriate programs at the local level. For the school age individual, a free public program of appropriate education and training is essential.

We feel that passage of Senate Bill 6 would reinforce and broaden the scope of programs and services which were initiated in Pennsylvania as a result of the historic Right to Education Consent Agreement.

Specifically, we feel that the following provisions contained in Senate Bill 6 will have the greatest benefit to handicapped children. first, the requirement that each local education agency maintain an up-to-date "individualized written program" on each child; second, the right of parents to due process when their child's educational assignment is changed; third, the annual evaluation of the State's program; fourth, that handicapped children shall be educated within the regular educational environment wherever possible; fifth, and most important, the evaluation of the State's procedures for the institutionalization of handicapped children, including classification and commitment procedures, service provided within institutions, and an evaluation of whether institutionalization best meets the educational needs of such children.

We feel with proper monitoring at the Federal level, the latter provision could be the vehicle to reverse the longstanding trend toward institutionalization of handicapped persons, particularly the mentally retarded.

In summary, we in the Department of Public Welfare, Office of Mental Retardation feel that Senate Bill 6 would go a long way toward assuring that handicapped persons of school age receive some of the rights they have long been denied.

[The prepared statement of Mr. Coyle follows:]

PREPARED STATEMENT OF FRANCIS X. COYLE, DIRECTOR, GOVERNOR'S OFFICE FOR HUMAN RESOURCES

Mr. COYLE. Mr. Chairman and members of the Subcommittee on Handicapped, thank you for permitting us to present our views on the intent and provisions of "The Education for all Handicapped Children Act".

We consider this opportunity a privilege and appreciate your willingness to conduct hearings for the purpose of learning more about the educational needs of handicapped children in our Commonwealth.

We support this legislation because:

(1) It is our belief that the test of any enduring civilization historically has been found in the consideration given to its weakest members

(2) It is our belief that the handicapped citizen has the same right to education, recreation and employment as the non-handicapped citizen, to reach his potential as a human being.

(3) It is our belief that every person has a right to full care, education and rehabilitation, and that public educational services must also be provided for those whose handicap is so severe that they cannot attend public school classes.

(4) It is our belief that the handicapped person is an integral part of any community and that for too long he has been relegated and segregated from the mainstream of society.

Senate Bill #6 will have the power to alter the lives of millions of children. It will give hope to families who, until now, have struggled against formidable odds. In Pennsylvania it will provide a broader scope to our present Special Education Program. Day school education and training of physically handicapped children in Pennsylvania began in 1902 when Peter A. B. Widener endowed the Widener Memorial School in Pennsylvania as a private institution for handicapped children. Since 1941, this school has been operated as part of the public school system of Philadelphia.

Passage of legislation in 1949 provided funds for the support of programs for the handicapped. Further legislative changes in 1953 and in 1956 made it possible for counties as well as districts to operate facilities—all supported in part by Commonwealth funds.

Startling changes have occurred within the past two decades. In 1964, 47,000 handicapped children received special education. This figure grew within the ten-year period to almost 130,000 exceptional children receiving special education services and this was exclusive of those enrolled in classes for the gifted, the socially-emotionally disturbed and children in private schools. A report from the Pennsylvania Department of Education indicates that in 1972–73, 169,875 children were enrolled in elementary and secondary special education programs and services.

The Right to Education Program for the mentally retarded, as a result of action taken by the Eastern District of Pennsylvania, U.S. District Court, has increased educational services across the state. Innovative and imaginative programs, unheard of ten years ago, have been initiated through the combined efforts of concerned public and private persons committed to the philosophy that all children have individual rights which cannot be denied.

Pennsylvania proudly considers her leadership role and her Right to Education Program as a major step in national educational history. We attribute the success of this program to leadership provided by our State Department of Education, its Secretary, Commissioner of Basic Education and the untiring efforts of staff in the Right to Education Office and the Division of Special Education.

Thus, your proposed legislation will have a different impact on Pennsylvania than on many other states. It will be for us not a beginning but an extension of services. It will be for us a new thrust. It can be the support we need to more fully implement changes in administrative and new operational approaches to public school programs which vitally concern community leaders.

The complexity of producing change in local school districts and to enact Federal or State Legislation was dramatized ten years ago. At that time you, Senator Schweiker, as a member of a task force preparing the voluminous Comprehensive Mental Retardation Plan, initiated action for passage of the Pennsylvania Mental Health/Mental Retardation Act. It was then that re-emphasis was placed on the importance of community leadership and participation.

Pennsylvania's population of handicapped children in the 0–21 age range exceeds the combined populations of such children in 19 other states. Despite this fact, our goal remains quality not quantity education. Thus, the sponsors of the bill are to be highly commended for considering the need for funds to provide monitoring and field technical assistance which, to ensure quality programming, is required at the state level on a rather massive scale. Granted the ultimate responsibility of achieving quality education lies with the local school districts, but without appropriate guidelines and leadership at the State level, uniform patterns are seldom developed, and even valued teachers fail to achieve their best results.

Moreover, we wish to point out that this bill goes further than that recommended in 1970 by Forum 12, entitled, "Children Who Are Handicapped", at the White House Conference on Children. At that time they stated: "We recommend legislation that will make the development of high quality programs mandatory for handicapped children through age three."

For this reason, we respectfully request that following passage of the legislation, when Federal guidelines are being developed for implementation, that concerned educators and officials from Pennsylvania and other states be invited to assist in their formulation. Our request stems from the fact that during operation of our first two-year developmental period of the Right to Education program, lessons already learned could readily apply to procedural and operational facets of the new legislation.

In conjunction with provisions, as provided in the Developmental Disabilities and Facilities Construction Act of 1970, and The Vocational Rehabilitation Act of 1973, Senate Bill #6 can be the means of providing needed educational services, but as important, facilitate coordination of programs involving life-span services to the handicapped. The latter will strengthen our overall educational system, and produce beneficial effects not only for the handicapped and their families, but for the entire community. We thank you.

Senator SCHWEIKER. I'd like to say that this Panel will conclude the morning session of our hearing and at two o'clock we will resume our hearing with the Local Implementation Panel.

This committee stands adjourned until 2 o'clock.

[Whereupon the hearing was adjourned until 2 p.m. the same day.]

AFTERNOON SESSION

Senator SCHWEIKER. The second session of the U.S. Senate Subcommittee on the Handicapped will please come to order. We'll call our fourth witness today, the Local Implementation Panel, and I ask the members of that panel to now come forward please, and sit at the table in front of me.

I think we'll handle this panel, if we may, the same way we handled the other panels. We'll have each of the panel members insert his formal statement in the record at the conclusion of testimoney of the panel members but then let them summarize as much of the statement as they would like, and any emphasis on any matters which we covered earlier even though it's not in your statement will certainly be in order. So let's start on my right and if you would, identify yourself before you begin.

STATEMENT OF WILLIAM WOLFINGER, SPECIAL EDUCATION, HAMBURG STATE SCHOOL; ACCOMPANIED BY ELLEN SOMERTON, COORDINATOR, RIGHT TO EDUCATION PROGRAM; RICHARD D. SHERR, DIRECTOR, SPECIAL EDUCATION, LANCASTER-LEBANON; RUTH SCOTT, DIRECTOR, SPECIAL EDUCATION, PITTSBURGH; EVERETTE McDONALD, SUPERINTENDENT OF SCHOOLS, BUCKS COUNTY; AND LAFAYETTE POWELL, ASSISTANT DIRECTOR, SPECIAL EDUCATION/INSTRUCTION, PHILADELPHIA; A PANEL

Mr. WOLFINGER: Senator Schweiker, my name is William Wolfinger and I'm from the Hamburg State School. Since we're going to give a résumé of our formal statement, I'd like to simply mention five concerns that I have that I hope can be included in this act.

The first thing, of course, which comes to my mind, which is very striking, is the need for physical facilities. These institutions are prime facilities in themselves for the care of the sick, we'll say, and to meet the needs health-wise, but when it comes to program facilities they certainly do not have it. We must consider some way of either renting additional space, providing money for that, or if I could even suggest that modular semi-permanent type buildings be provided that could be moved from place to place when populations tend to change, and they will fluctuate I'm sure.

There's another concern I have about auxiliary services because normal children in the schools are receiving art and music normally in the everyday program. However, here in Pennsylvania music and art are denied special education children unless the particular local school district is willing to extend it to them from their general education fund. I'd like to extend these auxiliary services to include physical therapy, occupational therapy, speech and hearing, and psychological help for the particular population of State schools. They are absent there and we need them desperately.

I'd say we need a longer period of time of involvement with these special services and therefore I'd like to suggest possibly consideration for a 220 day year for those children so that there's no regression taking place over the customary 3 month summer vacation.

Senator **Schweiker**. You said 220 as opposed to what?

Mr. **Wolfinger**. 180 presently for the regular public school.

This morning we mentioned the fact of the high costs, but certainly the need for transportation both on grounds of the State school as well as from the grounds to community based facilities is something that's very imperative.

I think I'd be remiss if I didn't mention something in connection with pre-school children. Although we presently have very few of these youngsters coming into our facility, I'm sure there are some and they should be immediately brought into the program. I think we have to consider more some of the older population who mentally are children and have never benefitted from the public education. They're still being sidetracked and forgotten.

Thank you.

Senator **Schweiker**. Thank you. Let's go on to the next one, will you please identify yourself for our reporter and go ahead.

Ms. **Somerton**.: I'm Ellen Somerton, Coordinator, Right-to-Education Classes for Intermediate Unit No. 19, which is in the Scranton area of the State of Pennsylvania.

I was asked to come here today to speak from a reference point of the teacher in the classroom and from my reference point as supervisor. I am a former teacher of the profoundly retarded. Some of the things that I would like to comment on regarding the present right to education program in the State of Pennsylvania and Senate bill 6 are these: régarding education as it now stands I think that it's absolutely necessary that in order for the right to education to be universally agreed upon we have to change our concept of what education is. For too long we have considered education as only reading, writing, and arithmetic. This is no longer appropriate with the children that we're concerned with at this time. To go along with this I think we are much in need of appropriate teacher training in the areas of curriculum as evaluation tools.

The curriculum as it needs to be for this type of child is most heavily involved with the sensory development areas, motor development and self-care skills and language read in those skills. These are skills that presently are not being taught to college students in our local training institutions.

I might also speak about the evaluation tools. Presently, not regarding the developmental scale, we have very, very few evaluation tools and these are things that we have to begin looking at.

At this time Pennsylvania is only involved with right to education in the area of the mentally retarded. I don't think that we can deny education to any handicapped children, and at this point we are not reaching all the handicapped children.

To look at future needs I see three areas, the first of those being the area of personnel. We've received very little financial assistance for such personnel as physical therapists, doctors, nurses, and occupational therapists. In working with severely and profoundly retarded children, these are absolute needs.

In the area of programing I agree with Mr. Wolfinger regarding the 220-day school year. It's absolutely necessary that we have consistent programing. I might also add that especially in our intermediate unit we're dealing quite heavily with children living in private licensed facilities. We might look to coordination with these facilities so that the activities that are carried on during the course of the day with the teacher and child also be followed through. It is an absolute necessity that carry-over and consistent handling of the child be present in order for that child's development.

Finally, in the area of material and equipment. If we are going to change our ideas about proper curriculum we also have to move from textbooks, workbooks and overhead projectors to such things as therapy spoons, prone boards, large mats, and types of equipment that are absolutely necessary for this child. Thank you.

Senator SCHWEIKER. How long have you been head teacher in your Right to Education Program?

Ms. SOMERTON. 2 years.

Senator SCHWEIKER. Since the inception of the program?

Ms. SOMERTON. Yes, since September of 1972.

Senator SCHWEIKER. Just another question about the program itself. How many students does your program encompass and what geographical area?

Ms. SOMERTON. We are in a four county area, Wyoming, Lackawanna, Wayne, and Susquehanna. At the inception of the program we had approximately 40 children; this school year we have 150 children in the Right to Education Program.

Senator SCHWEIKER. And how do you feel the program is being accepted by the community at this point in time?

Ms. SOMERTON. Very much so, however, I have to say that at least 90 percent of our children live within private licensed facilities. Our largest jump was when we began last year, one of the directors of a private licensed facility was not in favor of education. She felt that there was nothing that could be done other than custodial care. After

1 year of the program she consented to give us the names of the rest of the population in that private licensed facility to be put into classes for the severely and profoundly retarded.

Senator **Schweiker**. Before this program was started up had you had an opportunity to do much work in this area previously?

Ms. **Somerton**. Yes. I was involved in the title 1 ESEA pilot project funded under Public Law 89–313, which was a pilot project in a private licensed facility which involved education of severely and profoundly retarded children.

Senator **Schweiker**. Thank you very much. Let's go to the next panel member.

Mr. **Sherr**. I'm Richard Sherr, Director of Special Education Services of Lancaster-Lebanon Intermediate Unit 13.

Thank you, Senator, for the opportunity to bring you remarks on Senate Bill 6. I've been asked to make remarks from two vantage points, that of a hearing officer in the right to education process, and also as a Special Education Director for the Intermediate Unit.

You are aware of the Right of Education Act in Pennsylvania so I won't recount that, but I would like to bring forth some feelings that I have gathered as a hearing officer and make some reference to testimony presented this morning relative to parents being frightened or being overwhelmed by the process. As a hearing officer I don't believe that's quite the case. I think parents being average people are not always articulate and not able to express their feelings, but I haven't felt them to be overwhelmed or frightened. They really have gotten their point across although they've done it in a way that we educators might not be totally familiar with.

I'd like to also react that I think an independent Right to Education Office is a viable institution, a viable office, that can operate as part of State government, but so it's not attached totally to State government. I've seen cases where they've had some clout with school districts. I think that is a viable office.

Finally, I'd like to reaffirm the need for the hearing officer or a similar process whether you call it hearing officer or whatever it would be called, which would act as a prod or an advocate or in some way encourage school districts not only to develop a program, but then to assure delivery of that program to every child.

Those are my major feelings on the hearing officer in that process. You may want to question on that later.

I'd like to react now as a Special Education Director of an Intermediate Unit and emphasize the need that I feel for Federal support for education of the handicapped. Everyone in this room is aware of the high cost of education for the handicapped, running from almost 75 percent higher to as high as 300 percent higher. And because of these high costs, it's sometimes easy for local school districts or State government to move away from that concern and move their money into other areas. Special education requires not only education, but also states that ancillary services such as physical therapists, occupational therapists, social workers, psychologists, instructional advisors are all essentials. I think these are the kind of services that will come with increased funds to education of the handicapped.

In regards to State-wide implementation, I had the pleasure several weeks ago to work with the Rocky Mountain Regional Resource

Center and with the several States out West in trying to deliver a right to education program to the constituents of those States. They had some very fine plans and some very fine thoughts. The stumbling block that they expressed was dollars. I think Senate Bill 6 could provide some way of moving around that particular stumbling block.

Finally, I have a concern regarding right to education in Pennsylvania in that it is currently addressing only the mentally retarded. There are other areas of exceptionality that should be included in the right to education in the same way that the mentally retarded are included. You may be aware that Pennsylvania has had some problems in funding of special education in this past year, and currently it does not have the funds to implement programs for the emotionally disturbed.

I have two final concerns relative to Senate Bill 6. My one concern would be that with the coming of Federal dollars, States across the country would divert money now being invested in special education to other purposes, and we in special education would not be any further ahead. The second major concern that I have is in regard to early intervention. We heard testimony early this morning that early intervention does have a pay-off. I'd like to see some way that we could address the needs of the preschool child entering into their lives as early as possible to make a better impact. Thank you.

Senator SCHWEIKER. There is a maintenance effort provision in the bill, and if you have a chance to look at it maybe we can get a reaction after you do.

Let me ask you, sir, how is your time apportioned between being Education Director and Hearing Officer? It probably varies a lot but could you give me an idea of what your time requirements are?

Mr. SHERR. That's a good question and one that I've been concerned about and I usually attempt to schedule Right to Education hearings in late afternoon or evening, because I feel my major purpose is backing in these units. So therefore the Right to Education process, the due process hearings does not really take too much time from my on-the-day job in the Intermediate Unit, it takes a lot of evenings.

Senator SCHWEIKER. All right. Thank you. Next we have Ruth Scott.

Ms. SCOTT. My name is Ruth Scott and I am the Director of Special Education in the Pittsburgh Public Schools for Intermediate Unit Two, because Pittsburgh and public schools and the Intermediate Unit are one and the same thing.

I would like to make statements about comments that were made this morning in reference to your opening remarks, Senator. You had indicated that you were interested in becoming familiarized with how due process with regard to right to education was implemented in Pennsylvania. And there were some statements made this morning that I feel I would like to speak to.

Pittsburgh had one of the three grants for the door-to-door census. And let me say that I felt that the door-to-door census in Pittsburgh really did not provide us with any basic information that we didn't already have. In fact as I'm beginning to look now as the State schools and hospitals are referring to us children who are enrolled or institutionalized there, we're finding that parents did not report this in massive numbers, significant numbers. This becomes a difficulty for us in meeting the institutionalization problem if these youngsters are returned to the Pittsburgh public schools.

I would also say that in regard to the due process hearings, we have had no adverse reactions from parents. They appear to understand very clearly what the due process is all about. Every youngster who was in a program for the mentally retarded in Pittsburgh, and we have processed over 3,000 of these now in the city in the last 2 years, has apparently been able to deal with this matter. I would say that the wording of the due process is cumbersome and requires much explanation by supervisors, teachers, principals, and my own office.

I would also say that the identification of the mentally retarded is going to differ vastly, depending upon the areas in which it's conducted. In an urban area you may have degrees of retardation which are results of socioeconomic factors and you may also have those people who are truly mentally retarded rather than functionally so.

I would also indicate that the monitoring and evaluation discussion which occurred this morning is one that should be undertaken seriously by funds that are placed within programs for educational purposes. I think that the monitoring of the programs is an absolute essential in order to ascertain that the moneys are allocated for the handicapped and that they go to the handicapped. The evaluation of the programs should be ongoing and continuous with good State plans, good intermediate unit plans, county plans, and good district plans, in order that parents, or the consumer, can be absolutely aware of the kinds of things that are provided for their children. So these are the points that I wish to react to from this morning's testimony.

For my own purpose of review of Senate bill 6, my major concern is one that I've expressed in my prepared testimony, which is that many times Federal funds are given to States or school districts and when the termination of those funds occurs, termination of programs occurs. And it would be a terrible thing if we were to initiate and expand programs for the different handicapped areas, because the Senate bill does address itself to many more disability populations than the mentally retarded, and after these programs would be initiated to have those programs terminated.

My one area of concern particularly in the Pittsburgh city schools at this point in time is that population who are known to be and have been identified as being severely emotionally disturbed and for whom we do not have sufficient services and programs provided. It is not an overstatement or an overexaggeration to say that I could double the number of classes for September of this coming school year if I had the funds. But once those services and programs are offered I would want to be able to assure the youngsters—in fact the youngsters themselves are interested in ongoing kinds of services—that these services would not cease and desist once the Federal funding program ran dry. And certainly the State Department of Education at this point in time would have to double the amounts of money that they are presently expending if they were to deal with this particular population.

I'll be glad to answer any questions that you might have.

Senator SCHWEIKER. Thank you. We'll go on to our next witness and then come back and ask questions of you later.

Mr. McDonald. My name is Everett McDonald and I'm the superintendent of schools in the school system in Bucks County. I have laid before you testimony that you might like to follow and the best way to approach this from my point of view is to just go down it very quickly and give you highlights.

This is divided up into an abstract which lists everything that's been said into one page. And then a statement of philosophy, what's being done in a typical school district in Pennsylvania, and we figure ourselves as typical. What financial conditions we face in order to continue to do what we're doing in programing. And then what desired improvements we think that Senate bill 6 might do for us.

On the first page, or page 1, "Statement of Philosophy," I think it's the philosophy of most school districts that they want to provide a program for all children and also an equitable program for each child. There is a difference of what we mean by the two, but it's a matter of degree, it's a matter of finances, a matter of ability to do so.

We also feel that there should be a shared responsibility within the local, state, and Federal Government. And if we could help each other we feel we could do a better job there.

Also we feel that children should be thought of as different people because they have different problems, they learn differently, they have different achievements, and so we recommend that we accept the philosophy of differentiation which calls for different ways of reporting to parents, different ways of achieving our goals and different sets of objectives and so on.

On page 2 we try to show what a typical school might do and to what degree, and so we've listed here what was done in Centennial Schools as far as mentally retarded classes and the number of children involved. Then we worked with the intermediate unit No. 22, using our buildings. We also have programs in which our children go to intermediate classes outside our buildings. And then we have children in private State approved schools with 48 children there.

At the bottom of that page 2 is an area which is extremely important and that is that we have a specially designed school for children which we call special education students, which includes the whole gambit, except hard of hearing and deaf. We also feel the last word is very important and that is youngsters get labeled and they stay in one place the rest of their lives. We feel that children should go in and out of the mainstream. In other words they should work with other children and they should be able to go to normal classes and back to their special classes. And they should be in special situations where it benefits them at the moment but there are times when there's more benefit to being elsewhere. And so labels should be temporary and as long as necessary. We hope never permanent.

On page 3 we thought it would be interesting to show that as much effort as you might give you still have problems. And if you live in a typical suburban community outside of a large city, you may run into the same figures we have here. I call your attention to just about four of them. When your enrollment increases by 743 percent over a 20-year period and your property assessment only goes up 228 percent, and the State reimbursement is going down and you are now at 1.5 percent increase but it's decreasing, and you are a property owner with the same home he lived in 10 years ago, 20 years ago, who is now paying five times as much tax as he did before, it's still extremely important for us to put programs in or to extend programs. Many people think of school as a place where children go to read and write, but they don't if there's no place for them. So to serve these children calls for extended funds.

Now, pages 4, 5 and 6, are lists of things that might be done if we had more funds or we had opportunity to expand our program. I asked the question which a superintendent never asks, and that is what would you do if you had all the money you wanted to run your program, and so I got 29 suggestions before I stopped writing and typing these.

Senator SCHWEIKER. We're afraid to ask that question in Washington.

Mr. McDONALD. I know it. This should be on the first page, but I'd like to call your attention to about five spots. If you look on page 4, the last letter "E", we now have the right to not graduate. In other words a child at 17 or 18 years of age may say that even though you have carried me along up through the high school and have a lot of programs I prefer to stay until I'm 21. So we have a potential of 60 to 100 youngsters per year who might ask for that.

On the next page, item "F", we think there should be funds for conducting in-service programs not only for the staff to work with the children, but also for the general staff, especially if we're going to mainstream children into normal classes. We ought to do it in as much time as we can and we need in-service there.

We are thinking of expanding the so-called preschool group. And in the Bucks County area alone we feel that there are almost or approximately 1,600 children who will be eligible for special education who are not being attended to in any way, shape or manner at this point.

There also need to be advocates. These people need to be employed as advocates not only to search out special education students for help, but to follow through and guarantee each student his right to education. We must remember that sometimes a special education student has a special education parent, and some of these people are not capable of getting the best from the schools for their children as they might be and so the advocate would be somebody that's working for their benefit, too.

I'm happy to notice that others feel that summer programs for special education would be helpful, especially since it would minimize education regression. We all know what we drop and forget from June to September and these children tend to lose more or forget more by not having more to start.

We find in our district we've gone from 6 or 8 Puerto Rican youngsters who do not speak English and now we have over 250. Many of those youngsters have problems of special education, plus the fact that some of them have not even gone to school in their own country and come to us as teenagers for us to work with.

I would say as a superintendent that the attitude toward special education in the superintendency is good. We think we do a pretty good job. We'd like to do a better one and I think this opportunity is something that will be of advantage to the children that we work with and do a better job for them, so we appreciate the chance to say that to you.

Senator **Schweiker**. You gave a blueprint of what's happening in your Centennial School District. I'm trying to relate the figures on page 2 to page 3 of the 14,231 enrolled students that you have on your page 3 analysis. How many under your Centennial School program would be considered handicapped? Do you have the total of handicapped that would fall into that 14,231 figure, or is that the total of A, B, C, D, on page 2 of your testimony?

Mr. **McDonald**. It's A, B, C, and D, or a total of 505 children full-time and 400 part-time itinerant services in speech, hearing and vision, yes.

Senator **Schweiker**. You're not counting anyone twice in there, is that right?

Mr. **McDonald**. No, sir.

Senator **Schweiker**. You're just adding those under A, B, C, and D, to come up with the total number of handicapped children you're servicing.

Mr. **McDonald**. Yes, sir.

Senator **Schweiker**. All right. Last but by no means least, we'll call on Mr. Powell.

Mr. **Powell**. My name is Lafayette Powell and I'm Assistant Director of Special Education in charge of Instruction for the School District of Philadelphia, I.U. 26.

Unfortunately, I did not hear the morning testimony and some of my comments may be redundant. First, I want to say I agree with a number of my predecessors at this table with respect to increased Federal support for the handicapped youngsters, and I hope it is for all handicapped youngsters.

The summer program that was pointed out by several people here is obvious to us in Philadelphia, first because of the very complex school environment from which I come. If you name the handicap, we have it. And I think we have it in multiple dimensions. However, as I looked at S. 6, I did have some reservations and these I want to point out, and I've noted them. One has to do with the labeling of handicapped children, particularly with respect to a public roster. In an urban community, such as Philadelphia I can see this as being resisted, resented, and definitely undesirable. In the first place, as has already been pointed out, some of the labels that we use are temporary. I do not believe that a special class youngster grows up to be a special class adult. If he did then we should recognize this in our tax system, in our penalty systems, and this we do not do. He becomes, after he leaves the special class, a normal adult, bearing all of the normal burdens anyone else has, even though they may be brighter and more endowed than the special class person. Consequently, I should hope that the bill, if it does employ labels, would do it at the minimum level on a very temporary basis under the most confidential circumstances.

Second, I believe, that in the progress we have made in the education of youngsters we have tended to reduce the difference between regular education and special education. I should hope that there's open boundaries which would be encouraged rather than diminished by this bill. By this I am referring to the process of mainstreaming in which youngsters may be in a special setting at one time and in a normal setting at another. Some of the very basic educational techniques that we know that are very good in special education are certainly very good in some other forms of education.

Earlier witnesses have already mentioned early identification. Early identification is not necessarily early placement. It just so happens that I have worked with preschool youngsters and have not had them placed in a special education setting after identification, but kept them with normal youngsters and their progress has been far greater than what you would have ordinarily expected. This does not mean they do not receive special techniques, special equipment, special attention.

Along with this early identification, of course, comes some recognition of the fact that some of these conditions cannot only be remediated, but prevented. I would hope that in this aspect where the bill has failed to recognize this need that changes would be considered to put emphasis on prevention. Thank you.

Senator SCHWEIKER. I thank you very much.

I think first we'll ask just some general questions that anyone who wishes may respond to. We're very informal so don't be bashful and don't hestiate to either differ or offer some contrasting views and answers. You've all been through the implementation process. Can you make any recommendation that would have made your life a lot easier, things that we in Federal Government might look for, particularly in going into new States and new areas, that might serve as helpful to legislative language or to implementation that might have eased the job that you faced.

Mr. McDONALD. This is going to sound a little negative but I didn't feel that we had to implement the State picture at all. I think that any educator worth his salt should have been doing most of this. Secondly, I think what we ought to do is get legislation that says you've got to do a better job of the total picture and not fragment it all the time into this, that, or something else. I was aghast to find there were some children being hidden by their parents because they had guilt feelings about having a child who was a special education child at home, and that's why the advocate role in our State and in any program is important. But I feel the children have a right to be educated no matter who they are and under what circumstances they are born. Then I think we need some help to do the special job that's necessary. For example, I do not have a facility for the deaf, but we do have deaf children who need services.

Legislation ought to be written so we can do the job for all the kids in the best way we can. It should not be limited only to certain disabilities.

Senator SCHWEIKER. How much do you lean on the right to education office in terms of your problem?

Mr. McDONALD. I think we're pretty fortunate that in our district we have a personnel and service division, and now we have a special education director and he's sitting right behind me here. His job is to find out if we're doing what we're supposed to for all the children after we get them placed inside the school, and to make sure that they are mainstreamed to the greatest extent possible, given their disability.

Now, on top of that structure is the intermediate unit structure and the director of special education is here for that also. They have been very cooperative and very helpful. And that's as far as I generally have contact. I assume he's getting cooperation from the State. I never had to go that deep because in our level it works out very well and I've found no problem at all.

Senator SCHWEIKER. Does anybody else want to comment?

Ms. SCOTT. I think that one of the comments that Mr. McDonald made just now answers the question you asked this morning, what you need to do to assure that the youngsters get the help. I think that in your legislation you can provide for information and education of the general education administrator, so that they are more sympathetic and understanding of the problems of the handicapped, so that the implementation of legislation such as this does not bog down. I think that's the only reason in the Pittsburgh public schools that we have been successful with the zero reject principle, was that the superintendent of schools was firmly behind this concept in offering full education, training and services to handicapped children in Pittsburgh. But there are not enough Dr. McDonald's and Dr. Makuch's in the United States I'm afraid, Senator.

Senator SCHWEIKER. Anybody else?

Ms. SOMERTON. Yes. I'd like to make one further comment regarding this. We mentioned before that the vast majority of the children located in the State of Pennsylvania were severely and profoundly retarded children, many of whom were living in private licensed facilities in our state schools and hospitals. And to look to the personnel needs, I really feel so as not to offend hospital staff, custodial staff, private licensed facilities staff, who for so long have been taking care of the custodial needs and some educational needs of the children, that we need to look to the area of coordinating people from the I.U. level to the facility level. In many instances, we have alienated people by going in as educators and saying we're the long lost friends of the retarded who they have for so many years taken care of and educated to the best of their financial ability. I have seen in our own intermediate unit a definite need for persons in the coordinating position to coordinate from I.U. staff to private licensed facilities staff people. So much of the education depends upon consistency that I really feel that this is a needed area.

Mr. SHERR. The counterreaction to your question is how it can be done easier elsewhere, and I have two major points very quickly. There should be a definite structure provided within each State, but that definite structure should be as simple as possible with as few reforms and regulations as necessary to complete that structure. And secondly, that they address quality from the very beginning. When I say address quality, I intend that they provide curriculum development, materials development, and instructional leadership from the outset rather than catch up a year later with them.

Mr. WOLFINGER. Senator, I think if you find that States are operating in a coordinated way as Pennsylvania was with the institutions working under the Welfare Department and in essence being transferred over to the Education Department, these points that have just been made I think are very important. You must have those two separate factions meet together first before you try to implement a change. Have them agree on whose going to make the decisions. And have all directors come from one source, preferably the Education Department because it gets very confusing at the implementation level to take direction from two avenues and try to keep both sides happy. I'm always in the middle.

Senator SCHWEIKER. That's the name of the game in our game too, but I see your point.

I'm sorry, go ahead, Mr. Powell.

Mr. POWELL. Also, I do not see how they can live through a situation where things have been mandated but not funded. It seems almost ridiculous to say that I hope that the funding either precedes or comes along at the same time as mandated legislation. It is very difficult, and misleading otherwise.

Senator SCHWEIKER. We have another word for it down here, impounded is the word we call it down in Washington.

Mr. POWELL. Well, in a large urban area with a school district already belabored with financial problems we find it very very difficult to provide the facilities and the personnel for the handicapped under the right to education.

I go along with my colleagues who say that the plan should be as simple as possible and publicized as much as possible so that the public does understand what we are going to do.

I also think that the school systems, particularly the superintendents, have to be made aware that this is a game that is not a temporary thing, and we're here for the benefit of the youngsters.

One of the biggest problems I have in Philadelphia in introducing such youngsters, for example, into the mainstream, are the resistances that I get from the administrators. They just don't understand. They raise all types of Archie Bunker prejudices about the retarded. They want to know what will happen if a handicapped youngster does something to a normal youngster. By the way, they never want to know what happens if a normal youngster does something to a handicapped youngster. So I think some provision will have to be made for not only staff development for those who are administrative heads, but for the education of those who are already in the field. It came to me as a great surprise that some of the resistances came from people who were special class people, who had been brought up under the special class umbrella, because they too had grave reservations and doubts as to whether they would be able to fit into such things as mainstreaming. In fact they wanted to know what's going to happen to teachers and administrators if the youngsters are mainstreamed. And when we say you will be mainstreamed too, then they want to know what will happen in the mainstream. So there is a great need of staff development training.

Senator SCHWEIKER. I'm going to have to send Maude down there to straighten some of those Archie Bunkers out. I think that's a very valid point. I think this is the very heart of the whole thing, prejudice is built into our society and you're saying it's just not among the people who are least educated and from whom you probably would expect it, but it's all through the system, even in the hands of the most educated and who were special education students themselves. And I think that's one of the very inherent problems that we face. That's exactly what we're going to have to face up to in this bill in order to strike it out.

Mr. McDONALD. Could I correct possibly a misunderstanding. I pointed out we built this special building and we went from 1,700 children to 14,000 children. We have lots of buildings to build so this time we built one which could encompass the entire spectrum of needs. We have academically talented children, normal children, and special education children in the same building, and they're not in separate wings. They are inter-related through the whole building so an educable creative child can go to art let's say with somebody who is an academically talented child. Physically handicapped children mainstreamed with all children in different classes. We had the opportunity so it was easy to do. And when we knew we were building and had to build, there was no problem to add to the school at the time. If I had to start with a static setup it would be a whole new different problem entirely.

NUMBER OF PEOPLE NEEDING HELP

Senator SCHWEIKER. I wonder if each of you would just very briefly give us a little insight, this is probably as much of an estimate as not and some of you probably heard the earlier witnesses being asked this question, but from your own point of view of your own perspective in which you operate, how many mentally retarded students do you serve and how many are not being served? I realize not being served may be sheer estimate and if you can't give us a figure, maybe an estimate of some percentage. And also, what system did you use to identify these children?

Mr. Wolfinger, let's start at your end this time.

Mr. WOLFINGER. Well, it's a little bit different situation in a State institution. They are already identified when they're there. They've accepted this either by court commitment or by the parents placing them there. But, fortunately, now as I sit here we are covering all 320 youngsters there with seven exceptions who are physically unable to attend any classes or to be worked with in any fashion because of their physical handicap, and they've been temporarily excused, but seven out of 320.

We don't go out and identify, the schools refer them to us. So I really can't address myself to that, but they are mostly profoundly retarded, multiply handicapped youngsters. They are what you would call the custodial type, they need life maintenance.

Senator SCHWEIKER. All right. Ms. Somerton.

Ms. SOMERTON. Senator Schweiker, I also have to address myself to the severely and profoundly mentally retarded since I am not aware of our entire population. I would say that roughly 95 percent are now involved in programs of education. I would say we are now not educating approximately 5 percent. There are those children living in rural areas who we have not identified. Now, we are educating children in rural areas who we have identified but only on the homebound basis, which is the absolute minimum involvement that the department of education would wish that we would have. It's the least desirable type of education. If at all possible, a child should be in a day long program and not be educated on a homebound basis. But, at this point, because of geographical problems we are educating some of the children on a homebound basis.

Our means of identifying these children was through public health nurses, mental health-mental retardation units, day service units, the local association for retarded children, and the department of public assistance.

Senator SCHWEIKER. Thank you very much. Mr. Sherr.

Mr. SHERR. We're currently serving about 540 mentally handicapped children. I'm presumptious enough to say that there are none that we're not serving in some way. Obviously some are being served at different levels of instruction in the home as was mentioned. We have four children on that particular method of service. But to our knowledge we're serving all the children that we have been able to locate.

How we uncovered the children was by using the procedure developed by the right to education office, the document known as COMPILE, the Commonwealth plan for identificaction, location and evaluation of children. And we used the State standards as developed by the department of education as to which programs they shall be assigned to.

Senator SCHWEIKER. Thank you. Ms. Scott.

Ms. SCOTT. In Pittsburgh we have the following numbers, first of all there are 68,000 in round numbers in Pittsburgh public schools, 3,000 of that number are in programs for the educable mentally retarded. We have 562 trainable and profoundly retarded children in four or five centers in the city. We have 150 children who are in programs for physically handicapped-mentally retarded youngsters. This would constitute 3,712, in rough numbers, mentally retarded children.

In identifying this number I did refer before to the census that we did. I would say that our most accurate referral and indicator of service is the interagency referrals from PARC, from Easter Seals, UCP, the other agencies within the community of any child who is going to be 4 years, 7 months of age, at the beginning of the school year. We take these youngsters into the program immediately. So that to my knowledge we are current. The only exception to this would be one child who is now in the field process who had been excluded from school under a certain section of the school code as a result of physical harm to the teachers, and the teachers' union has forced us. So essentially as far as those that we know I would say we are serving all children.

One other comment I would like to make on this. We were required in the COMPILE document to identify all children within the school district. One of the things we were asked to do was to use our local education agency and in Pittsburgh we used the principal as the local education agency and asked that all principals of the 113 schools in the city of Pittsburgh send to our office records on all children who had I.Q.'s of 80 or below. These I.Q. scores were not done on an individual basis, most of them were done on the basis of group tests. And after this census was completed we met with the State secretary of education and indicated that these names would not be forthcoming to the State office as being retarded, because approximately 20,000, which included our 3,700, of these children in the city of Pittsburgh were reported as having I.Q.'s of 80 or below. Some of our schools have a mean I.Q. of 85. And this is what I referred to in my opening statement to you, that many times functional retardation is a product of a socioeconomic area rather than true retardation. But we do have hard data in the city of Pittsburgh to support this.

Senator SCHWEIKER. All right. Mr. McDonald.

Mr. McDONALD. The figures on the phases you referred to add up to 105, but they tell me that it's almost 600 or close to 575. We feel that we have everybody inside the building included; how well we serve them I'm not sure, but I wouldn't say that they're all served appropriately. We also have, and this may be biased, records indicating that no child is being neglected at the moment but I'm not positive we haven't missed somebody. The point I'm making is that I think we can get them all inside the building and so on but I think what we have to do is improve our programs so that we can do a better job. We think we uncovered them all.

As far as referrals are concerned we do the usual standardized testing and observation, so teacher or principal may refer, or any nurse or guidance staff may refer. In fact parents may refer. Anybody may refer. And we have a department of special services which is a small group of about 12 people involved in psychological testing, social work, and associated services, and they together make a recommendation to the director of special education on each child who should be placed in special education. That person then evaluates again to see if this is a proper candidate and is properly referred. People, by the way, will accept some referrals in special education where they won't accept others. If a child is bright and has a learning disability the parent is relieved that he isn't mentally retarded, and so we have to be careful of that referral to see that it is carefully checked out. We have two professional people that make that decision and then they go to the principal who operates a building with these classes in it and he and they together put a child in class. Every 2 years now under the Right to Education Decree we have to evaluate what we have done and one part of it is that we've properly placed this child and if so must continue. If we haven't, let's make sure we correct that mistake as soon as we can. Like our language-disabled class, children do not stay in there all day, they come in and out for a period of time. In other words they go in and out for the need they have and not for the total package. A child doesn't have to be special ed. in all of his aspects, it may be in just some.

Senator SCHWEIKER. Thank you very much. Mr. Powell.

Mr. POWELL. The figures I'm going to give you are approximations.

Senator SCHWEIKER. I understand that's perfectly acceptable.

Mr. POWELL. The population of the school district is about 275,000 pupils out of a total citizen population of 400,000 pupils. The reason I mention that is because our handicapped youngsters come from that 400,000 and not from the 275,000.

In our retarded educable, EMR groups, there are approximately 7,000 youngsters. And in our low-functioning retarded trainable at the present time I have approximately 1,200 youngsters, at least 1,200 youngsters were just recently placed. Unfortunately I am not in complete compliance. I have 102 youngsters which still haven't been placed. That is 102 this morning, it may be 110 when I get back because the numbers change that fast.

There are a number of methods of getting the youngsters to us. They are referred, of course, by the usual agencies, social and educational agencies. They are examined by a psychological staff that's now numbering 31, obviously understaffed. There is a consent letter in which the parents or the parents' surrogate must indicate that they approve or accept the placement. In the event there is not this approval, then it has to go to a hearing, and I think right now we have about 25 hearings pending.

I have to agree with Mr. McDonald that many are in buildings, but whether they are receiving what may be classified as education and training may be a serious question. In fact some of the buildings may be a serious question, because as you can probably guess in our urgency to secure facilities we were not always offered the best room and the best building.

The securing of personnel presents a problem obviously, especially around this time of year when there's a shortage of people who are qualified. We have had in the past to accept people who were certified but not necessarily certified in special education with the stipulation that they would immediately enroll in a program leading to special class service vocation.

One of our biggest problems is the cost of transportation, because we not only have to transport our handicapped, we also have to transport private and parochial school students if we have lines or routes that will accommodate them. We have not been able to transport all of our special class youngsters. We have a good number of youngsters in private licensed facilities. Where we have large numbers we send teachers to the facility. We classify it as an instructional enrollment, but really it is an off-site instruction because we give the youngsters a full-day program. We also have about 75 youngsters in home instruction and there the teacher visits the youngster in the home at least 5 hours a week.

THE HEARING PROCESS

Senator SCHWEIKER. Thank you. I'd like to ask Mr. Sherr if he could summarize just briefly a little bit about how the hearing process works and what volume of cases you have, the mechanics, the numbers of how you expose them, and any other general comments you care to make.

Mr. SHERR. The beginning point of a hearing is dissatifaction on the part of the parent with the educational program that the school has designed. As someone here mentioned, there is a form given to every parent indicating what the program will be, and the parents have easy access to a hearing by simply making a checkmark if they'd like a hearing. And it's explained then very clearly that they can have a hearing at their convenience, evening hours, and that they can be represented by counsel and if they don't have the funds they can go for public aid; that they have the right to a psychological evaluation independent of the school and they can get that through the mental health mental retardation system. So I think parents' concerns and rights are protected.

In the actual hearing process, if it goes the whole way up to an actual hearing, the hearing officers are trained, there have been several sessions where they were given specifics on how to operate the hearings, some of the high points of the school code and so on. From my own part, I see the hearing process as informal but formal, and I sort of smile when I say that. I say informal because I like the parents to be comfortable and that they can feel free to say what's on their mind and that they can do this without fear of reprisal. I say formal to the point that it doesn't become a donnybrook or free-for-all with school people and parents debating back and forth. And usually we've been able to do that.

At the end point the hearing officer has to render an opinion as to what he determines from his educational viewpoint as the best program for the child. And then both parties have a right to appeal and the appeal process is very carefully laid out both for the school and the parents.

ESTIMATE OF COSTS AND DISABILITIES LEAST SERVED

Senator **Schweiker.** Thank you. I see we have another panel yet, a very important panel, a panel of citizens groups, so rather than distract from their time I just have two more questions. I wonder if the group individually, if you haven't covered it in your statement—some of you might have covered it in your statement and I think most of you did—would submit later on for the record just as a matter of information. The two things I'm most interested in are what disabilities in your area are least fully served. In other words where are you doing the poorest job in meeting your needs? And two, can you give us some estimates of your costs? Now again I realize this is a very difficult thing and it may not be easy to break them down, but if you can give us some reasonable estimate of your costs it would help us in finding out costs of the Federal program and by estimates we can make projections. I wish you would submit those for the record by dropping us a note.

Mr. **Sherr.** Would you elaborate, Senator. Do you mean per pupil cost or total cost or present?

Senator **Schweiker.** Well, I would say either way, whichever would be most convenient for you. I think we are most interested in per pupil cost, yes. But whatever form you have them in, we'd be glad to get them. We do need a cost figure per pupil because that's what we have to build our authorization and appropriations out of.

Ms. **Scott.** Senator, you realize that differs vastly from one program area to the other as has been related this morning, and do you wish it broken down by program category?

Senator **Schweiker.** We would appreciate as much breakdown as you have without putting it through a computer. In other words if you bookkeep it and break it down that way, yes, that's very helpful to us. If you don't and can only give us an estimate then give us the best you can. But share your figures with us if you have them and if not just give us an estimate.

[The following information was subsequently supplied for the record:]

LANCASTER-LEBANON INTERMEDIATE UNIT
1383 Arcadia Road, Lancaster, Pa 17601 Tele. (717) 394-0707
L. LLOYD RUOSS, EXECUTIVE DIRECTOR

William L. Counts, Jr.
Assistant Executive Director

Edgar L. Lawton
Assistant Executive Director

Richard D. Sherr
Director of Special Education Services

James E. Doyle
Business Manager

APR [illegible] '74

March 28, 1974

The Honorable Richard S. Schweiker
United States Senate
Washington, D. C. 20510

Dear Senator Schweiker:

At the recent hearings on Senate Bill 6 which were held in Harrisburg on March 18, 1974, you had asked that all those individuals who testified relative to that Bill send you the following information:

A. Disability areas not properly served at present.
B. Estimate of cost per pupil by various disability areas.

The Lancaster-Lebanon Intermediate Unit currently provides adequate programs for all exceptionalities with the exception of the socially and emotionally disturbed. The reason for this is a reduction in the Intermediate Unit budget which took place in the late Fall of 1973 which eliminated monies that were available to develop programs for children as they were identified. We sincerely hope that this money will be restored in order for us to provide programs for these children for the coming school year. However, the significant point of this is that there are vagaries in state funding which do leave gaps in service although they are, hopefully, short term.

You asked for information relative to the per pupil cost by various disabilities and included below is a table of this information. I might caution you, however, that this information may not be comparable to cost in other states, or even within Pennsylvania, because of the manner in which it must be computed. Some districts or states include capital costs and others do not, and this must be considered in any cost comparisons.

Educational Services to the Twenty-Two School Districts in Lancaster and Lebanon Counties

Disability	Cost Per Pupil (Full Time ADM) Elementary	Cost Per Pupil (Full Time ADM) Secondary
Trainable Retarded	$ 2084	$ 1717
Severely/Profoundly Retarded	3014	2281
Socially & Emo. Disturbed	2767	2840
Learning Disabled	2984	2016
Physically Handicapped	3062	4163

I should like to take this opportunity to extend to you my sincere appreciation for your demonstrated interest in the exceptional child. I can personally assure you as a special educator that there are great merits contained within Senate Bill 6 and that it must be seriously considered if we are ever to provide the adequate and appropriate education for each handicapped school-aged individual. Further, I should like to indicate to you that I would be most happy to provide any further information that you might need as background data as you continue to battle for adequate funding for the handicapped.

Sincerely,

Richard D. Sherr, Director
Special Education Services

RDS:pd

pennsylvania mental health, inc.
219 pine street • harrisburg, pennsylvania 17101 • (717) 236 9363

March 25, 1974

Honorable Richard S. Schweiker
United States Senate
6221 Dirksen Office Building
Washington, D. C. 20510

Dear Senator Schweiker:

During a hearing on Senate Bill No. 6 on Monday, March 18, Carl Wass, representing Pennsylvania Mental Health, Inc., presented testimony before representatives of the Senate Subcommittee on the Handicapped.

Following his presentation and testimony by representatives of several other voluntary agencies, they were asked to provide information pertaining to the cost of education for handicapped children which is not covered by the Department of Education. Following is information pertaining to these costs:

Annual Reimbursement Per Child

Residential educational centers for physically handicapped - $5,500

Day schools for physically handicapped (blind and deaf) - $4,125

Day schools for brain damaged, cerebral palsy and muscular dystrophy - $3,500

Day schools for the emotionally disturbed - $3,000

These figures represent the amount that is covered by the Department of Education and local school districts. Additional costs would be the responsibility of the parents or guardians. Retarded children are covered in the Right to Education, and therefore there would be no additional costs for them.

It is interesting to note that the reimbursement for the emotionally disturbed children is the lowest category, and there is no additional reimbursement for emotionally disturbed children in residential programs as is the case for the physically handicapped.

Sincerely,

Robert W Evans
Robert W. Evans
Central Area Director

RWE/bam

citizen advocates for mental health since 1952 • a division of the national association for mental health
supported through the united way and other voluntary contributions

Senator **Schweiker**. Thank you very much. I certainly appreciate your time and I know your busy schedules are very demanding. Thank you for being with us today.

[The prepared statement of Mr. Wolfinger follows:]

PREPARED STATEMENT OF WILLIAM H. WOLFINGER, DIRECTOR, SPECIAL EDUCATION SERVICES, HAMBURG STATE SCHOOL

Mr. **Wolfinger**. I have been asked to testify how this bill will aid the handicapped children in Pennsylvania. May I begin by complimenting the sponsors and all those who have had some part in preparing this act since it is a most needed package of legislation.

I am one who has seen the Commonwealth of Pennsylvania accept the principles of right to education, due process, individualized programming, and a broadly based group of task forces or advisory panels to monitor the system. Although the original court decree was for only the mentally retarded, it has been strongly indicated that the provisions would apply to all handicapped children; this act would assure that it would be extended.

Since May, 1972 when the Commonwealth of Pennsylvania received the final consent agreement much has been done by the Commonwealth in order to augment the document for all retarded children by September, 1972. A concerted effort to identify all the retarded children within the Commonwealth began immediately as COMPILE* was initiated by the Governor to accomplish this. Directives began to flow to all educational agencies in order to begin the process, and eventually program guidelines were also distributed in a document known a COMPET.* Hearings by two court appointed "Masters" have been also conducted throughout the state to further monitor the implementation.

We are now at a point of having had over a year and a half of time go by with certainly many accomplishments, but also much remaining to be done.

First, this act, in my opinion, will be a stimulus for our state legislature to look at the total problem of education for all handicapped children since the consent agreement was limited to only the mentally retarded.

Second, it soon became apparent in our implementation of programs for the mentally retarded that much more money was needed for staff, equipment, and physical facilities.

Third, perhaps from such a review by our legislature will emerge the potential for providing a better balance of program for the handicapped, one that will provide these children with the same program advantages afforded the so-called "normal" child.

Fourth, perhaps a year round-twelve month school can also emerge since this is so important for handicapped children: 220 days of school instead of the customary 180.

Having been involved closely with the implementation of the Right to Education at the state school level in Pennsylvania where some 3600 children of school age reside, I would like to direct some comments toward this portion of the total picture.

Many changes have taken place at this level from the period of pre "Right to Education" to the present which our Pennsylvania Departments of Education and Public Welfare can be justly proud. Yet, as before, the gap has not been closed and much still remains to be done.

Historically, the education programs throughout the nine state schools and hospitals of the sixties were very limited as to the roles they played and as to the numbers and types of handicapped that they served. In general, the profoundly retarded-multiple handicapped children were not receiving any education or training advantages. The severely handicapped or trainable age group had limited inclusion but the mildly retarded or educable children were for the most part all included. A department of education in the institution as such was looked upon as a step child to be tolerated but not taken seriously. Many institutions did not have an educational director or principal and many that did lacked any certification or training in special education. As a result of such differences little similarity of educational progress between institutions existed prior to the early seventies.

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*NOTE: The COMPILE and COMPET programs and additional material relating to the Pennsylvania Right to Education decree may be found elsewhere in these hearings.

From this beginning and due to a large extent to the Right to Education there has been a tremendous change where today we find in each of the nine state schools a well organized educational complement serving all of the retarded institutionalized children to some degree.

Because of the cooperative efforts of the Departments of Education and Public Welfare, former institutional staff members were given the option to transfer to the local intermediate unit responsible for special education and serve on a school term basis of a minimum of 180 school days or remain as a state employee working twelve months but under the supervision of the local intermediate unit. The school program for the children was established on a minimum of 180 school days as the normal public school children receive, but most of all the educational opportunities were extended to all the retarded institutional children. For the first time the profoundly retarded and multiply handicapped children were given some attention beyond that of a doctor or nurse.

In the specific case of the Hamburg State School I have seen emerge an inter and intra-departmental cooperation aimed at one sole factor—providing the most appropriate and effective program for the child. This is most likely happening in each of the nine or ten state schools and to some degree the Right to Education has served as the catalyst.

Much remains to be done and without adequate financing most of our needs at each of the state schools will remain unanswered.

Most pressing is the need for adequate physical facilities in which to conduct the educational programs and the related services that are so critical in order to reach the total need of the child. Buildings are desparately needed that are equipped for the handling of the physically handicapped, since most of the severely and profoundly retarded children found in institutions are also inflicted with severe multiple handicaps. Handicapped children should not be compelled to attend classes or individual sessions in crowded or substandard facilities.

Nor, should they be denied the needed services of physical therapy, speech and hearing evaluation and instruction, psychological assessment and consultation, or occupational therapy because of inadequate physical space. Such facilities as a well equipped physical activity area, a therapeutic swimming pool, and a physical therapy treatment area are imperative if we are to turn the tables upon the ever present regression of gross motor abilities among the severely and profoundly handicapped.

A well equipped area for the testing and the treatment of speech and hearing deficiencies is essential since most of these children have losses in these areas and corrective measures will help them communicate.

Likewise, space is needed in order to provide for the necessary psychological evaluation and consultation. It is not conceivable to crowd several psychologists into a room and expect them to serve the children effectively.

Each of these areas of special services are needed and to ignore the physical aspect of the problem is to render the staff ineffective. Certainly this act should provide for the leasing of essential space, if not for the actual construction. If construction could be included, it is my opinion that modular type or semi-temporary type of construction be provided in order to allow flexibility of movement from one school to another as enrollments fluctuate.

Educational staff components have been increased, but in many of the state schools where large numbers of profoundly-multiply handicapped children are located, the individualized instruction is offered one hour or less per child per day. As these children can benefit, the time each day must be gradually increased indicating a continual need for additional staff. Ratios or standards set for the number of children served by a teacher or teacher aide (paraprofessional) need, therefore, to permit more flexibility than those established for the trainable and educable classes.

My last concern is that this act will somehow permit or mandate the inclusion of art and music instruction or therapy for all handicapped youngsters. Presently our special education guidelines prohibit this being included.

Thank you for this opportunity for me to express my concerns on behalf of the Pennsylvania State Schools and Hospitals.

[The prepared statement of Ms. Somerton follows:]

PREPARED STATEMENT OF M. ELLEN SOMERTON, COORDINATOR, RIGHT TO EDUCATION PROGRAM

Ms. SOMERTON. I have read the present text of the proposed bill, and I offer the following observations with reference thereto. Since 1970 I have been employed in the field of special education. I have acted as a public school teacher of trainable mentally retarded, a program co-ordinator of a Title I, ESEA federal grant funded under Public Law 89-313, for the education of multiple handicapped pre-school aged children, and, am presently functioning in the capacity of Co-ordinator of the Right to Education Program in Intermediate Unit No. 19, Scranton, Pennsylvania. I have done extensive work in the the implications of the Right to Education Act in Pennsylvania for specifically the severely and profoundly mentally retarded. I have authored a book entitled, "The Right-to-Education Child: A Curriculum for the Severely and Profoundly Mentally Retarded", which was published by Charles C. Thomas Company, Springfield, Illinois, in February, 1974. My specific duties at this time involve direct teacher supervision and training, implementation of programs, and also program development for future years.

The Right to Education Act has been in operation at the intermediate Unit level in the State of Pennsylvania since September, 1972. Since that time we have noted a program that has increased significantly. In Intermediate Unit No. 19 during the 1972–73 school year there were in operation ten classes for the severely and profoundly mentally retarded. At present we now have twenty classes concerned primarily with the education of the severely and profoundly mentally retarded. I feel it necessary to impart to you today, that I speak from the reference point of programs for the severely and profoundly mentally retarded, and even as I am aware that the bill that you present is far more encompassing, the program as it now functions within our State of Pennsylvania, and more specifically within Intermediate Unit No. 19, is most involved in this facet of the entire program. I might further clarify that the vast majority of children located through the intensive search to identify, evaluate and educate all mentally retarded in the State of Pennsylvania, were found to be severely and profoundly mentally retarded, many of whom were living in state institutions and private licensed facilities. So I speak to you people today from the reference point of the mentally retarded.

I am inclined to agree with and strongly support Senate Bill 6 after being involved in the Right to Education Program in Pennsylvania. There are specific points in the proposed bill that I shall make reference to later in my testimony based upon my experience in Pennsylvania.

The local programs, as I mentioned above, commenced in September, 1972. Many people were in question as to the appropriateness of such a program, however, at this time those same people are amazed at the progress of children who these persons regarded as "mere vegetables". Children who hadn't moved learning such skills as rolling from their stomach to their back as a primary step to sit up unassisted. I feel that one important point that is in need of mention here today is that in order for all citizens of these United States to support education for all handicapped children, it will be necessary for them to change their concept of education. For far too long we have equated education with "reading, writing and arithmetic"; this is no longer appropriate. It is our duty and the right of each of these children to have taught to them those skills which are most suitable to their individual needs.

The curriculum that should be implemented with these children, and is implemented in Intermediate Unit No. 19 and other intermediate units in our state, is one that concerns itself with sensory development, motor development, tion we have seen many gains—children who were a severe burden to their families, and who required complete custodial care, are now somewhat independent in the areas of self-feeding and toilet training to mention just two. The bill that you present here today not only speaks in behalf of the children, but also their parents. If we, through training can lighten the burden of parents, or educate them in proper ways of instructing their children, then it is indeed our duty to do so.

Not only are we responsible for initiating programs, but we are also accountable for evaluating these programs as to their relevancy to the child. I am, therefore, in complete agreement with Section 6 Number 4 of the bill which refers to eligibility of students. We must constantly update and refine the individual programs for each child. In our Intermediate Unit, we have basis, the program of the child and his success or failure in it. Many of our gains have come about through trial and error efforts to develop a workable program for the child.

At present, we cannot assume that our program is operating to its fullest potential. In fact, in dealing with the lives of others one can never assume that the best is being accomplished. Yes indeed, we must endeavor to improve and upgrade at all times. Currently, the State of Pennsylvania is very much involved with the education of the mentally retarded. We in the state, and at the intermediate units have matured to the point of becoming aware of the needs, implementing individual prescriptive programs, and finally evaluating each of the children as to their gains through various competency checklists and developmental charts. Specifically in Intermediate Unit No. 19, we have grown to twice our original size, developed a published curriculum, improved evaluation tools, created our own evaluation measures and finally and most importantly, we have witnessed the absolute need and value of the Right to Education Act.

To look to future needs I can speak from three reference points, those of personnel, programming, materials and equipment. Currently, in our state guidelines we receive very little financial assistance for personnel such as physical therapists, and nurses. In dealing with this type of child, expertise in the areas of medicine and motor development are most necessary. The size of classes, because of the type of child involved, is also a matter that necessitates due consideration. These children need individual attention and, therefore, teacher-child ratio must be small.

To consider programming I sincerely feel that to hope for optimum success, programs of education for the severely and profoundly mentally retarded, will have to involve year round involvement with the teacher. So much of the learning experience of the child is based upon the consistent, day to day meeting of the child and instructor. Therefore, the current one hundred and eighty day school year is not enough. And finally, our equipment needs are going to go from the need for text books, workbooks and overhead projectors, to therapy spoons, prone boards, large balls, brushes, hair dryers (for tactile stimulation) and many other such items that are not currently noticed in a classroom.

I noted on page three of the bill the estimated cost of education, and it is my impression from my knowledge of the costs of Intermediate Unit No. 19, for educating this type youngster, that these figures are low. I may then state that I take issue with this part of the bill.

At present in the State of Pennsylvania we are only meeting the needs of the mentally retarded. I indeed feel that extension of services to all handicapped children is a very urgent necessity. I question if we can deny any handicapped person the opportunity to be educated to the fullest level of his ability and that is why today, I say I strongly support Senate Bill 6 and thank the United States Senators responsible for its proposal, and plead for its approval in the name of all handicapped children in the United States.

[The prepared statement of Mr. Sherr follows:]

Prepared Statement of Richard D. Sherr, Ed. D. Director of Special Education Services, Lancaster-Lebanon Intermediate Unit 13

Mr. Sherr. As a special educator who has devoted a lifetime career to education of the handicapped and also as a parent of a handicapped person, I am most pleased to provide testimony relative to Senate Bill 6.

The time allotted does not permit elaboration, however, there are two major considerations I should like to address: (a) the need for a due process procedure and the role of a hearing officer, and (b) the overwhelming need for federal assistance in the area of special education.

S.B. 6 demonstrates a need for a type of hearing officer as it notes that many states have a free public education law for handicapped children but that there is frequently an exclusion that is invoked. The bill also calls for a written educational plan to be developed for each handicapped child. A person similar to the hearing officer model as developed in Pennsylvania is necessary to oversee and monitor the absolute abolition of exclusionary tactics and the development of the educational plan to the satisfaction of parents. As a hearing officer in Pennsylvania, I have been involved in the process of gaining access to a free public education for children who were denied or negotiating an educational plan to insure that a child does in fact receive an *appropriate* education, not six hours (or less) of simply "time in school".

I would suggest that states be required to develop some type of monitoring official to guarantee the delivery of the necessary educational services to handicapped children.

As a second point I should like to emphasize the need for a federal support for education of the handicapped. Because education for the handicapped is expensive (an average of 75% higher and, in some cases, 300% more expensive) it is tempting for state governments to avoid full responsibility in this area in view of other financial pressures. Legislation has proliferated in states but has not been fully reflective because of the lack of funds to come with the mandate.

Funding is a problem in the Lancaster-Lebanon Intermediate Unit despite Pennsylvania's early leadership position in the education of all handicapped. Presumably because of the tremendous increases in the cost of special education due to the impact of the consent decree, state funding has become restrictive to some extent. The Lancaster-Lebanon Intermediate Unit received a $308,000 budget reduction in October, 12.7% cut from the budget approved in June for 1973–74. The Intermediate Unit has initiated cost saving procedures since November (not utilizing substitutes in some classrooms; drastically reducing supplies and materials; curtailing in-service education) that certainly do not lead to the delivery of the appropriate, high-quality educational program required for all handicapped children in the long haul.

Because of these budget restrictions there are children in the Unit that have been identified, evaluated and ready for placement in programs that cannot be placed because a program is not available due to budget restrictions. These are children with an exceptionality other than mental retardation which is covered by the consent decree.

Unfortunately, all indications point to a similar financial situation for the 1974–75 budget year in the Commonwealth in regards to education for the exceptional child. In a society as rich as ours and in a state with the resources of Pennsylvania, there is no justifiable reason that exceptional children do not receive the education they surely need and deserve.

For the reasons briefly outlined above, I urge serious consideration of S.B. 6. No person concerned with human beings can fail to see the merits of the passage of such a bill.

[The prepared statement of Mr. McDonald follows:]

PREPARED STATEMENT OF EVERETT A. McDONALD, JR., SUPERINTENDENT OF SCHOOLS, CENTENNIAL SCHOOLS (IVYLAND, SOUTHHAMPTON AND WARMINSTER)

Mr. McDONALD. Abstract—I. Education must be for all children with an adequate program for each child.

II. Most school districts accept the above philosophy and provide programs for Special Education students to a high degree, but usually desire to improve their services.

III. Increases in enrollment, salaries of staff, costs of supplies, and cost of building construction with lesser increases in wealth, have caused a very serious strain on local finances, resulting in ever-increasing taxes. Federal aid would be welcomed.

IV. The list of suggestions made by staff indicates there are plenty of worthwhile improvements, expansions, and new programs that could be accomplished if additional funds were available.

As a school administrator, I would welcome the opportunity to improve and expand our programs, and I sincerely urge the passage of S–6. If I or any of our staff can be of further service, please feel free to call on me.

I. Statement of Philosophy

It has been and is the stated philosophy of the Centennial Schools that it is the responsibility of the school district to provide an adequate educational program for *ALL* children in the community, and a *personally equitable* educational program for *EACH* child in accordance with his needs, abilities, aptitudes, and interests.

It is felt the above should be a shared responsibility of the local community, the State, and the Federal Government.

The above should be accomplished by recognizing the individual child's physical, mental, and social conditions, his own peculiar learning strategies; and developing educational programs be differentiating: Objectives, space, time, methods of reporting to parents, achievement expectations, staff.

II. Centennial Schools Programs

A. Operated by the Centennial School Board(1).

Type	Classes	Children
Mentally retarded educable	15	190
Brain-damaged	4	63
Socially and emotionally disturbed	4	33

B. Operated by Intermediate Unit No. 22 in Centennial Buildings

Type	Classes	Children
Deaf and hard of hearing	3	24
Mentally retarded trainable	3	30
Physically handicapped	3	24
Socially and emotionally disturbed	1	8

C. Programs Including Centennial Schools Students in Intermediate Unit Classes

Eighty-five full-time children in intermediate unit programs. In addition, itinerant services are provided to 800 children in speech, vision, and hard-of-hearing.

D. Programs Including Centennial Schools Students in Private State Approved Schools, Etc.

48 full-time students attend private State approved schools

(1) Housed in an especially designed school building and in "regular" schools—value of integration of students in the mainstream.

III. Local Financial Conditions

The analysis that follows is not only peculiar to the Centennial School District but is applicable to many school districts, but to varying degrees.

	1960-61	1973-74	Increase	Percentage increase
Enrollment (1,954-1,700)	4,754	14,331	9,757	213 (743)
Property assessment in thousands	$26,000	$85,358	$59,358	228
Cost/pupil (total budget)	$508	$1,233	$725	142
Bonded indebtedness without AVTS in thousands	$6,064	$39,168	$33,104	546
State reimbursement as percentage of budget	38.6	44.4 and dropping	0.58	1.5
Property tax on home worth $20,000 today	$10,000	$20,0000	$10,000	100
	$3,333	$6,667	$3,334	100
	31 mills	93 mills	62 mills	200
	$103.32	$620.03	$516.71	500

IV. Desired Improvements in local programs

The question was asked of teachers and administrators who are involved in special education programs what they would recommend for improvements in the local school program if they were allowed unlimited funds. The following is a list of recommendations that are not in rank order or listed by priority since they might have different priorities for different circumstances. It should be noted, however, that even though a school district feels that it is doing a fairly good job serving the special education child, that a great deal more could be done if adequate funds are available.

A. Smaller class sizes or additional staff (aides) for present classes.

B. Transfer of classes of mentally retarded, Trainable children from Intermediate Unit operation to local operation.

C. Transfer of classes of brain-damaged children from Intermediate Unit operation to local operation.

D. Transfer of classes of socially and emotionally disturbed children from Intermediate Unit operation to local operation.

E. Development of programs (basic skills, career-oriented) for children from ages 17 to 21 who do not choose to graduate from secondary schools after 12 years of schooling. (Potential—60 to 100 per year).

F. Conduct in-service programs for special education and general staff to improve services to children.

G. Develop more educational materials for individualized instruction.

H. Expand secondary school programs for the; Brain-damaged, socially and emotionally disturbed, educable, and trainable.

I. Expand and improve pre-school (Head Start/Day Care) development programs. (Less than 100 of over 8000 children from disadvantaged families now being served. Estimated number eligible for special education—1600).

J. Expand the services of the special experience room. (a simulation facility in the Centennial Schools wherein conditions can be controlled to a very high degree and learning strategies can be observed.)

K. Develop effective vocational and career programs with adequate staff of placement counselors.

L. Increase staff of psychologists, social workers, and guidance counselors.

M. Develop more "alternative" programs.

N. Employ staff of advocates to "search out" Special Education students and follow through to guarantee each student his "right to education."

O. Establish effective programs of parent consultation and education.

P. Develop and subsidize work experience and co-op programs to allow students to attend school and engage in worthwhile career pursuits.

Q. Operate summer programs for special education students to reduce and minimize educational regression.

R. Conduct follow-up studies to determine effectiveness of existing specialized programs.

S. Increase secretarial staff to handle required reports, etc.

T. Employ bilingual teachers.

U. Provide classes for children who test out educable, but are motionally disturbed.

V. Employ curriculum specialists to recommend materials.

W. Provide additional class trips.

X. Provide industrial arts center classroom where the teacher can utilize the unit approach teaching method.

Y. Provide equipment for individual study, study carrels, etc.

Z. Employ speech therapists.

AA. Provide clothing allowance for children who are in need.

AB. Development of programs in the special experience room along the lines of perception.

AC. Provide complete homemaking area with a qualified homemaking instructor for the upper educable children.

AD. Etc.

[The prepared statement of Ms. Scott follows:]

PREPARED STATEMENT OF RUTH SCOTT, DIRECTOR OF SPECIAL EDUCATION FOR PITTSBURGH PUBLIC SCHOOLS

Ms. SCOTT. My name is Ruth Scott and I am the Director of Special Education for the Pittsburgh Public Schools. I have held this position since 1969. I think it is important to state that I have been involved in Special Education for 23 years and have watched the growth of programs and services for the handicapped increase dramatically in Pennsylvania during this period of time. However, no matter how great the increase has been, it still has not been sufficient to meet the needs of all those children known to have handicapping conditions.

I have carefully reviewed Senate Bill 6 and wish to commend the authors of this bill for their recognition of problems facing the handicapped, their concern and their foresight in proposing that financial support for the education of these young people must be mandated. Those states in which larger numbers of handicapped children are now being educated have been able to deliver services because monies have been made available to the schools and school districts. It is appropriate, in the context of increased services, to note one major concern I have regarding Senate Bill 6, as it is now written, and its implementation. In my review of the bill I could find no reference for the continuation of Federal financial support once the desired initiation and expansion of services have been accomplished within the various administrative units, State and local. I am stressing, in effect, the fact that all too frequently in the past, programs initiated through Federal effort and financial support have withered on the vine at the local level when Federal funding has been discontinued. From the vantage point of long experience, I believe it essential that Federal funds continue to be provided to State and local education agencies where program expansion has been based upon, and possible only with, such financial support. We will continue to have handicapped children in need of your assistance.

Let me cite an example. The Pittsburgh Public Schools offer programs for emotionally disturbed children. With 36 classes in existance at this time. There is an urgent need to expand this number of classes to 72 for the 1974–75 school year. It will be impossible to do so even with the generous funding available through the State Department of Education. If I could be assured that additional funds from the Federal Government would be available, I could then initiate planning and begin to operate programs for these children without the worry of "where will the money come from". In this way the Federal funds would be a *supplement*, enabling us to increase services for the emotionally disturbed in Pittsburgh rather than supplant those programs paid for by the State and district, as now would have to be the case.

Further, as Regulations are established for the expenditure of these federal monies, I would hope that the individual school district or designated administrative boundaries would be able to determine the specific needs for the locale. These needs should not necessarily be delimited to instructional services only, but should consider the possibility that facilities may need to be built to house some of the children to be served. Antiquated buildings which are provided on a "cast off basis" for the handicapped are really not appropriate for certain children who require a different kind of school program. Old buildings don't lend themselves in many instances to the kind of space needed for the physically handicapped, the profound mentally retarded and the extreme acting out-disturbed child. It is essential then that the local educational agency and the consumers be involved in determining the priorities for the handicapped within the home area. Section 3, Paragraph 9, implies that you share this concern for consumer involvement.

In relation to determining the priorities for program expenditures, I feel that consideration must also be given to the impacted population areas. These areas by definition are known to have larger numbers of children who require special services. That is, the greatest incidence of frequency and prevailance of handicapping conditions exist in major cities. I hope that in the development of basic criteria for administration of these funds attention be given to this important factor. For example, the 75% of the excess cost for the Pittsburgh public schools should be based on the pro-rata for the district rather than a predetermined figure set by the Department of Education.

Before I close, I would like to address myself to the concept of excess cost. Out of my experience in administration of programs for the handicapped over the last 10 years in Pennsylvania, I have, frankly, developed a bias concerning this matter. I strongly support the concept of excess cost as the basis of funding, as indicated in Senate Bill 6. Excess cost permits program operators to develop programs according to instructional needs of children. Some programs are extremely expensive, the programs for the deaf-blind, physically handicapped, profound mentally retarded, and multiple-handicapped require much more money than those programs for the educable mentally retarded. Even within discreet disability areas, there are significant differences in program costs and only through the excess cost funding base can administrators be assured that the needed instructional program and services will be provided.

In conclusion, I strongly support Senate Bill 6 and the concepts contained therein:

1. payment by Federal Government to the States on excess cost.
2. the requirement that plans must be developed at all levels indicating educational delivery system to this population.
3. that the responsibility to educate all children must be recognized by general educators everywhere.

[The prepared statement of Mr. Powell follows:]

PREPARED STATEMENT OF LAFAYETTE S. POWELL, ED. D. ASSISTANT DIRECTOR FOR INSTRUCTION DIVISION OF SPECIAL EDUCATION SCHOOL DISTRICT OF PHILADELPHIA

Mr. POWELL. Mr. Chairman and Members of the Senate Subcommittee on the Handicapped:

It is indeed paradoxical that one should have to plead for the handicapped child during these enlightened days of the twentieth century. Even more paradoxical is the fact that such a plea must be made for *all* handicapped children in a land of plenty whose flag symbolizes not only "freedom and justice . . ." but also education" . . . for all."

Through the slow process of humanization, man has come to recognize and assist those whose handicaps were blatantly obvious. Consequently, the first labels and educational facilities were for the blind, later the deaf, and still later, for those with marked orthopedic handicaps. Those with limitations and deficits with less visual impact had to bide their time.

And so it was that the mentally retarded, the severely and functionally disturbed, and the learning disabled waited for recognition and help.

With this overall progress came some limitations and hazards:

(1) Labelling of the handicapped children that carries an unfavorable valence. Bill S.6 appears to support this type of identification where such labelling is not necessary (e.g. the mildly retarded in a regular grade setting.)

Senator SCHWEIKER. Now we'll call last but by no means least, a panel of citizen organizations. This is a group of people who are not only recipients of these programs but also in one way or another because of their own willingness to help are persons committed to these programs and these activities, and therefore are in an excellent position to give us some evaluations and some suggestions. So will everyone in the group please come forward and sit at the table in front here, please.

I think at this point since many of you have been very kind and courteous and have sat through the main part of the hearing, the thing that would help us most in my judgment is to pick up either part of your testimony—first of all, we'll submit all your statements for the record—but to pick up the parts of your statement that you feel are most relevant to the questions and points that have either been asked or raised; and second, addressing yourself to any of the questions that you don't feel have been satisfactorily answered, or which you disagree with.

Perhaps you'd like to have some frame of reference here, so we're interested in your views as leaders of the groups that receive the services and if you disagree with some of the other panels we'd like to know that, and your statements may not have covered that. So the summary of the salient points from your statement plus any disagreement or any different perspective that you as a specific user of the service might shed light on as opposed to some of the other people who've been providers of part of the services.

Let me start on my right here and again would you identify yourself for the record and proceed.

STATEMENT OF CARL WASS, REPRESENTING MENTAL HEALTH, INC.; ACCOMPANIED BY DALE A. WHITAKER, DIRECTOR OF PROGRAM SERVICES, UNITED CEREBRAL PALSY OF PENNSYLVANIA; RICHARD SELL, SPECIAL ASSISTANT FOR RIGHTS TO EDUCATION COMPLIANCE FOR THE PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS; EDWARD KIRSCH, PARENT OF A RETARDED CHILD; AND MRS. WILLIAM C. KELLER, REPRESENTING THE PENNSYLVANIA EASTER SEAL SOCIETY; A PANEL OF CITIZEN ORGANIZATIONS

Mr. WASS. Senator, I'm not so sure I'm the right one to start this off inasmuch as I have just recently come into this hearing room. However, I will attempt to do so. My name is Carl Wass and I am representing here the Pennsylvania Mental Health Association, Inc., which is an organization of Pennsylvania citizens intending to improve the conditions of care and treatment for the mentally ill and to promote mental health in general.

We have on behalf of my Association submitted written testimony that I will not at your suggestion attempt to read through. I'm sure you will do that at a later time, but I will attempt to highlight some of the factors and perhaps comment as you have requested on some of the things that we think are a concern to us.

We have found that in the recent consent decree, that the Department of Education in Pennsylvania has been making an apparent and sincere effort to attempt to identify and provide services within the pubic school structures, for those students who are identifiably retarded.

We have found that the identification of other areas of problems, such as the emotionally disturbed child, are not being met because the emphasis is on the mentally retarded which has been highlighted by the consent decree. We in the Mental Health Association feel that there are quite a number of students in Pennsylvania who fall into the category of emotionally disturbed, and who are entitled to receive as normal an education as is possible within the structure of the public school system.

The Secretary of Education has indicated that he feels that the consent agreement does in fact extend to other exceptional children. And in defense of the Department's inability at this point to attempt to meet much beyond retarded children, there is, as the Secretary indicates, a budgetary and administrative problem in being able to expand into the emotionally disturbed area.

We recognize that the budgetary problem is a major concern and we also recognize that administration and identification is a problem and is a concern. This frankly is why the Pennsylvania Mental Health Association, Inc., does feel a genuinely strong support for the Senate bill No. 6, which as our association views it, is designed to be a funding medium. It's designed to assist those States which have recognized the problems of the handicapped child and who are interested in doing something about it, and who are also embarking on doing something about it. We feel that funding is a most significant problem and we feel that Senate bill 6 takes a good stab at trying to correct that problem.

I think really that is perhaps our major area of support for Senate bill 6. We do support it and we are particularly pleased I think with the phraseology in the bill that an individualized written program is contemplated in which the instructional system as well as the parents or guardian of the identifiably handicapped child will cooperate in the development and implementation of the program, since that is a step in the right direction.

With that comment unless the Senator has questions I'll pass the microphone along to my next partner.

Senator SCHWEIKER. Thank you very much. I believe we'll go on down the panel before we start questioning.

Mr. Whitaker.

Mr. WHITAKER. Senator, I'm Dale Whitaker, United Cerebral Palsy of Pennsylvania. I'm here in place of Hugh Ransom who was called out of town, so I do want to thank you for allowing me to come in to represent United Cerebral Palsy.

First of all I'd like to underscore Mrs. Ellen Somerton's testimony in the last panel. Her type of testimony comes from people who are in the nitty-gritty part of both education and rehabilitation, and from what I've heard from her we would strongly support much of her testimony.

The right to education started with the Pennsylvania Association of Retarded Children's effort to instigate this court decree, and naturally it followed that much of this educational programing centered itself on the mentally retarded.

It would be an omission or oversight if I didn't mention that about two-thirds of the cerebral palsy population is mentally retarded and usually there are many multiple handicaped children. So this impact of right to education has hit our affiliates across the State. Because the school system now serves school-aged children, we have now centered our attention more on the early identification of preschool area.

After 6 months of right to education, we did a study and we found out the following factors which I see have been underscored by many people. We found that the special education teachers were not properly trained to deal with all exceptionalities. Especially the physically handicapped who are either mentally normal or mentally retarded. We found out the facilities and equipment were inadequate. We found curriculums and programs were inadequate. And most of our people out in the field felt that, for the most part, homebound instruction was not the right approach for many of the people. We also found through our executive directors who deal immediately with the intermediate units, they felt that parents needs were misunderstood and misinterpreted by the school districts. These are the final salient points that we found after 6 months of existence of the right to education. Of course, we realize that the school system did not have ample time to implement programs so desired by September of 1972 because they had to get started with programs after the decree was made. We do understand that there was not enough funding or time available to do what everyone wanted to do.

In summary, I would say we recommend really a large part of the funding should go into early care and identification. If you reach the children early enough you can help them develop so that they can maybe enter the regular school when they're at appropriate age—six or whenever the appropriate time would be for them. We would underscore the absolute necessity of early identification, care and treatment and early education.

We also feel that there should be some funding for developing proper curriculums for the special education students in colleges. We feel they are not being trained adequately to handle all exceptionalities. In fact, if you go through a college catalog you will see that the majority of their programs or curriculums deal with mental retardation and there is maybe only one course of exceptionalities which would include epilepsy, cerebral palsy and other disabilities.

I think that is about the major portion of our thoughts on this. We do back Senate Bill 6. Transportation should be included in this we feel, but we're strongly in favor of Senate Bill 6. Thank you.

Senator SCHWEIKER. Thank you very much, Mr. Whitaker.

Mr. Sell.

Mr. SELL. I'm G. Richard Sell, the Special Assistant for Right to Education Compliance for the Pennsylvania Association for Retarded Citizens. I'm here in place of Mr. Brown who could not be present.

Mr. Polloni presented our testimony earlier today, and I'm here primarily to answer questions. On my right is Mr. Edward Kirsch who is appearing in place of Mrs. Andrew Schmidt. Mr. Kirsch is the parent of a retarded child in the Pittsburgh Public School System, and I would like to have him amplify a couple of concerns that we did present in our previous testimony.

Mr. KIRSCH. There are three general areas of concern that the parents have. Fundamentally, a lack of adequate facilities is one of the biggest things that bothers us. The city of Pittsburgh is unable for financial reasons to provide adequate facilities for the children in terms of specific buildings or classrooms designed for retarded children. There's been a lot of shifting around and children are being placed in basements and wherever they can find room for them. Whenever they find need for classroom facilities for regular children they move our children out. We are in very desperate need of buildings and construction of new facilities for these children specifically designed for their needs, because here we're talking about handicapped children, children that are nonambulatory, and there are all sorts of different problems that they have besides just being mentally retarded.

My child happens to be a trainable mentally retarded child and the opinions I have are designed to specifically meet the needs of children like her because we don't know much about how to train and provide for these children.

Transportation seems to be another big problem with all the parents across the State. Pittsburgh has improved somewhat in the last year but it still has a long way to go as far as dealing with taxicab drivers and people like this that have no real concern or real knowledge about how to handle the children. A good example last week, one of the parents found that her child was in a cab with three normal children, three teenage normal children, and she couldn't understand this. The cab came to pick her child up and she found her child being placed in the cab with three normal children. Obviously the cab driver found three fares on the way to her house and thought this was a good chance to make an extra buck; he was going to take the three fares and the retarded child too. We have all sorts of problems like this. Sometimes you get your child ready for school at 7:30 and the bus arrives at 10, or the cab comes at 10.

One of the other areas that really concerns the parents is a lack of a reasonable ratio of teachers to students in terms of speech therapy, occupational therapy, things of this sort. I have a daughter who is 7 years old and we're not even sure that she can hear yet.

STUDENT-TEACHER RATIO

Senator SCHWEIKER. Can you give us a specific ratio?

Mr. KIRSCH. Well, the ratio as I understand it in speech therapy, is approximately three full-time or two full-time speech therapists and one part-time speech therapist for the needs of 737 children, and this is rather a ridiculous ratio. These people are really only involved with trainable children so it's hardly likely the children will get much speech therapy. Then again there are the facilities the speech therapists have to share. In one instance there is a speech therapy room sharing space with a piano tuner and a music class. It's hard to imagine anybody can accomplish anything in a situation like that.

One of our biggest concerns is the lack of funds to provide facilities for these children because presently a plan the school board has in mind is to move these children, all 562 of them, to an 88-year-old building on the north side of Pittsburgh in the Manchester area. It's certainly not adequate for the needs of these children in view of the fact that some of them are multiply handicapped and blind and have many other physical handicaps. To put these children in a four story building seems ridiculous, but there doesn't seem to be any place else for them to go because there are no funds available for new construction. We're hoping that Senate Bill 6 will help us in this area. It would minimize a lot of shifting around from basements and from one old building to another and give us a centralized location. We're very anxious to have a center for trainable children in the city, but one that's designed for the specific needs of the children rather than just taking an old building and trying to convert it.

Many of the parents complain that the children that are teenagers and don't have many more years to spend in the system, and that they are very much concerned because their children have received very minimal vocational and occupational training and shortly they will be out of the system. Where will they go to from there. Many of them were 15 years old when the consent agreement came down so they maybe only have 3 more years left and agewise they will have to be removed from the system and put into supportive programs outside of the right to education program.

These are the areas which we would like to see Senate Bill 6 address itself to. And I'm sure with the passage of this bill a whole lot of problems that concern us will be answered since this is a long range program. It's not something that the board of education is going to have passed for a few years, it's going to be with us forever.

Senator SCHWEIKER. Thank you, Mr. Kirsch.

[The prepared statement of Mr. Kirsch follows:]

PREPARED STATEMENT OF EDWARD W. KIRSCH

March 28, 1974

Dear Senator:

As a parent of a retarded child I had the opportunity on March 18, 1974 to speak to you at the hearing on Senate Bill 6 in the State Capital in Harrisburg.

Because of time restrictions that were placed on those of us expressing many of the concerns of we parents I would like to take this occasion to expand upon what I have related to you.

Perhaps the most glaring weakness in S-6 lies in its failure to include a specific statement that would allow for the use of Federal monies in the construction of new facilities as well as program improvement. Since S-6 is designed to subsidize the education of all handicapped children it is imperative that we recognize that the physical character of the facilities are essentially inseparable from the programs to be administered in them. The physically handicapped child as well as the mentally retarded child often find their greatest challenge in mastering the demands of their environment. It is readily apparent therefore, that multi-storied buildings constructed a century ago are hardly appropriate for students who are non-ambulatory, poorly coordinated or both physically handicapped and mentally retarded. Sometimes we hear the rationale from school administrators that stairs and a maze of hallways in old buildings provide a valuable learning experience. The primary consideration in this kind of thinking is clearly economic and not at all consistent in terms of the educational experience. As parents we are more concerned with the safety of our children than their ability to negotiate staircases. The walls, floors, and ceilings that surround many handicapped children constitute the greatest part of their environment. Thus it is with much hope that we urge you to incorporate such a provision for special construction in the language of S-6.

I note with much pleasure that S-6 does not fail to recognize the need for improvements and guarantees in the Due Process provision. I highly commend the sponsors of this bill in their insistence on an independent evaluation of physically handicapped children as regards placement, labeling or classification, in our own state, in Penna., we have a very poor system in public education. This does not offer any guarantee that the child will be placed in the appropriate class.

Too often the decisions reached in Due Process Hearings are reflective of the educational agencies convenience rather than the welfare of the child, the integrity of the Hearing Officer in such cases is relative to his degree of loyalty or independence. I think it should be established that Hearing Officers not be employees of the State or the local educational agency.

Pittsburgh as you know yet labors under an antiquated system that allows for the appointment of its Board of Education rather than its election by the public it purports to serve. This historically, has resulted in the major decision making process falling exclusively within the province of the School Administrators to the total exclusion of the consumer. The lack of parental input has traditionally been the cause of much hostility and frustration. I note that S-6 does consider consumer input essential and I hope the Bill will survive with this provision intact. Perhaps then the autonomy that the appointed Boards of Education now enjoy will disappear along with the outdated notion that the modern parent has nothing to contribute.

With the passage of Right To Education there evolved a public recognition of the enormity of the problems that beset the handicapped child and his family. Much ground has yet to be covered before the impact of this recognition reaches home. It is precisely the types of progressive thinking evidenced by the sponsors of S-6 that the awesome reality of this task will not prove overwhelming.

Hopefully those of us guilty of decades of neglect and prejudice will find a measure of solace in the knowledge that we have elected sensitive legislators like Richard Schweiker. Finally the disadvantaged have found an advocate.

Rest assured Senator that we parents will do all that we can to assure your success in this quest for equality for all citizens of this nation.

I am proud to number you among my friends. I am certain your constituency will not fail to retain you as their representative in the Senate of the United States.

Please express my gratitude and best wishes to your colleagues as well as those of the handicapped children of Pittsburgh. Our prayers are with you who have given so much hope to those that have known so little.

Most Respectfully,
Edward M. [illegible]
2215 [illegible] Ave.
Pgh, Penna.
15216

Senator SCHWEIKER. We will move on to Mrs. Keller.

Mrs. KELLER. I'm Mrs. William C. Keller, representing the Pennsylvania Easter Seal Society. As you know our caseload has children of all varieties of handicaps, from those who are profoundly retarded to those who are brilliant and all kinds of physical and emotional handicaps as well.

I don't have anything very original to add to what I've heard this afternoon. We would like to express our concern about one or two points. I think in my own mind the primary one is the existence of architectural barriers in our public school systems. Although it's against the law in Pennsylvania to construct buildings with public money that are inaccessible to the handicapped, we continue to do it. We continue to build public buildings that may fulfill the letter of the law but are an awfully long way from fulfilling the spirit of the law. And it isn't going to do any good to tell a child he has access to education and deny him access to the building. He has to get there to get that education. We have buildings where school boards have ramped an entrance, usually in the back where they take out the trash, for the children in the wheelchairs. But then if the child can get into the building he can't go to the bathroom, or he can't take care of himself in the bathroom, or perhaps he can't reach the telephone if it's on the wall. We wish there would be some way this bill could address itself to reducing the design barrier.

We would like also to see if we can do something about parental expectation. The parents of handicapped children, as everybody at this table knows, have their eyes cocked and their ears open for this kind of legislation. When they see that it's been passed their spirits rise at once and they think, well, now help is at hand. It takes a long time to implement the law, and we wish you would do all you can to require that the intent be met by the agencies involved. I'm not sure how it can be accomplished, but parents and people involved with the education of the handicapped, have high expectations of something like this and we want to avoid any frustration and bitterness that can come from slowness of implementation.

Because we have been in the business of delivering educational services in our local affiliates we have some pretty good affiliates and pretty good special education and preschool classes. We're old in this business. We've been doing this for over 25 years. We would like to see the bill encourage the purchase of existing quality services. There are a lot of good ones, not just Easter Seal Society services. And it's ridiculous to go on discovering the use of the wheel every week, and we have had public schools take over the special education programs and we phase ours out only to have parents return to us and say what can you do about getting my child back in your Easter Seal classes because they are better than the ones in the public school. It takes a while for public school services to get the expertise, the understanding of dealing with children. So we would like to see this bill provide for the purchase of existing services.

We also would like along with this whatever we can do in the educational system in this country to reduce the number of people who think they are handicapped, because often the way a person feels about his handicap is the guiding factor in his life. If he thinks of it as an inconvenience that he can live with pretty well because he's been educated and equipped and because he is also being integrated with the people who don't think of themselves as handicapped, though most of us are handicapped in one way or another. I think the philosophy of moving the handicapped children in and out of the regular classes as much as possible is going to do a great deal to reduce the number of people who think they are handicapped and expand the number of people who can make it.

We support the bill and we will do everything we can to help.

Senator SCHWEIKER. Thank you very much. I think your point is extremely well taken about putting people into the mainstream.

AUTISTIC CHILDREN

I'd like to ask either Mr. Whitaker or anybody else who might be able to answer this, whether you include services to autistic children in your definition of mental health?

Mr. WHITAKER. Although I'm not the mental health person, the gentleman to my left is. I would not include autistic children exactly into mental health. They are a special group of children that have not only an emotional disorder, but many blocks to learning that involves other specialties besides just the psychiatrist or psychologist.

Senator SCHWEIKER. Does anybody else want to respond?

Mr. WASS. I would say, yes, we would include them in the broader definition of mental health. However, we would recognize that it may be somewhat difficult within the structure of the public school system to care completely and adequately for such children. We would echo Mrs. Keller that perhaps some consideration could be given to a purchase of service of an outside functioning agency that would be more uniquely suited to rendering the kind of service the autistic child might need. But in the broader definition of mental health, yes, Senator, I would respond positively to your question.

COST OF SERVICES BORNE BY PARENTS

Senator SCHWEIKER. The next question is really for anyone that would like to answer. In any of your respective knowledge and programs is there any cost being charged to parents for any of the services for their handicapped child presently, and if so what's the nature of the charge and cost? Who might answer that?

Mr. SELL. There are various costs, Senator, and it depends on the service. For instance, with the mentally retarded specifically, when you're dealing with say evaluation provided by the Mental Health/Mental Retardation program there is a liability scale which the parents must meet, and therefore are charged certain percentages. It again depends entirely on the service.

Mrs. KELLER. I'm not competent to answer it really. I have the vague feeling that there certainly are charges and I can get an answer for you, but I can't give it to you now.

ADDITIONAL SERVICES NEEDED

Senator Schweiker. We'd appreciate it. Does anybody else want to respond to that? Any information you could provide for the record would be helpful.

Another question I have is what might be the most important thing from any of your respective positions that ought to be provided in the present program in Pennsylvania that's not being provided? In other words we've heard a lot about what is being done and obviously Pennsylvania is probably doing more than any other State in the Union in this area and I recognize that, and I recognize the effort here. But as you folks see it in terms of areas where we're not providing a service what is at the top of the list of services or educational aid that we should be providing and that might give us a guideline in Federal legislation to be aware of?

Mr. Wass. I think I would answer, Senator, with this, qualified personnel at the grass-roots level. There are many school districts we find throughout the State who leave it to the intermediate unit to provide services for the handicapped child. And the intermediate units sometimes are not providing these services and when they do we find that the classes that provide services for the handicapped are either overcrowded, as was suggested in the case of Pittsburgh, or that the personnel, the teaching personnel is not equipped to handle the particular problem. The end result is that many of these children who have an identifiable handicap are not getting the kind of education that is contemplated by the Department of Education or by the consent order. I think on the grass roots level competent personnel are needed.

Mr. Whitaker. I would second that statement. I said in my original statement that the quality of the personnel on the nitty-gritty of the ratio of teacher and pupil is not adequate. The training of the special education teacher is a matter of importance and I would second this remark about qualified persons who have the daily contact with the handicapped. It's not that we weren't doing a good job up to now, it's just that we have more people to be served. More people are being found and more exceptionalities are being brought into the school system that weren't known before. Many of these children were hidden away and we're finding them today, so we need to update our teaching methods.

Senator Schweiker. Thank you. Do you want to respond to that?

Mrs. Keller. The people who I've heard today, are speaking primarily as residents of city areas. But if you are the parents of a handicapped child and you live in Tioga County, Pa., your problems are compounded because the handicap population, total population, if you take the retarded and physically handicapped and emotionally disturbed and put them all in a barrel, it's pretty thin. And transportation is a terrible, grinding, continuing problem. If you get a child into a class they probably don't have a special education teacher in some of these schools because as I say the population is very thin in areas like Potter County, McKean County, Perry County. Providing all the ancillary services that handicapped children need, it's just too much to take them to school and then dump them at home again in the afternoon with no companionship, no nothing.

The rural areas are poor in a thousand different ways that the handicapped in the cities are really not aware of. It's terrible to be handicapped in a big city and the worst handicap in many cases is to be living in the shadow of a service that could help and not know it. But if you're rural poor, and you don't have to be very poor, if you have a handicapped child you're stuck if you can't move.

Mr. Seal. I think I'd like to emphasize something that was said earlier by one of the education people that is that training for administrators, all levels of administration, needs to be stepped up and improved. The biggest problem that I've seen so far is the attitude of the administrators and the basis of decision making is administrative rather than on the educational needs of individual children. This is not responsive or appropriate to the individual's needs.

Mr. Whitaker. Once again as long as I'm seconding everybody, I believe when Easter Seals mentioned that Easter Seals has much of the expertise, up to 25 years of service. Well, not to compete, but Cerebral Palsy does too have some expertise in this area and so does the Association for Retarded Children. But what I'm trying to say is that there should be some way for the school systems to cooperate with the agencies who already have expertise in the area of programs and services to develop self-help skills. There were some reports back in our evaluation that problems were due to lack of funding primarily to the school system. But we receive mostly lip service in our attempts to help school districts to develop adequate programs and services to the handicapped. There should be more of an extended hand and more cooperation between agencies of the private sector as well as the public sector.

Senator Schweiker. I think that pretty well concludes the questions I had and I want to say that the record will be open for some time if some of you have some other thoughts or ideas or suggestions we'd be glad to include them in the record.

We greatly appreciate your patience and perseverance through the day, but I think it also was helpful because we've had your testimony after hearing the other witnesses. You who are nearer the problem in the grassroots of solving this problem have had the opportunity to respond and I think it is most beneficial and we appreciate your patience.

I want to again invite you for any further thoughts or ideas for the record as our hearings around the country conclude.

I want to say that I appreciate all the witnesses for taking time from their very busy schedules and for joining with me in this effort to make S. 6 a really meaningful bill, and also to get the ideas from Pennsylvania which are so important to the Nation at this point in time because of their research and pioneering and the initiative that this State and this Commonwealth and you folks have shown. We want to thank everyone for coming.

[The prepared statement of Mr. Wass follows:]

PREPARED STATEMENT OF CARL WASS, PENNSYLVANIA MENTAL HEALTH, INC.

Mr. WASS: I am Carl Wass, representing Pennsylvania Mental Health, Inc., an organization of Pennsylvania citizens which seeks to improve the conditions of care and treatment for the mentally ill and to promote mental health generally.

For many years PMH has been concerned about emotionally disturbed children who have been denied a public education. Although some school districts have added classes for socially and emotionally disturbed children, there still are many districts in Pennsylvania that do not offer any programs for these children.

Dr. Bertram S. Brown, Director of the National Institute of Mental Health, recently stated "over one-half of the U.S. Population is now under 25 years of age, and it is estimated that over 10% of this present resource—about 10 million youth—require mental health services. Their needs range from hospitalization, to treat and reverse serious psychopathology, to the early intervention of doctors, teachers, counselors and parents able to handle mild, transient problems and thus prevent later developmental crises."

There can be no excuse for any child not receiving an educational program to meet his needs regardless of the nature of his mental disability. The role of the school in providing an education is vital to the success of treatment and therapy. They should not be separated which only compounds the problem.

Recently we received information from the Pennsylvania Department of Education that 200 children were excused from school for a period of time the past few years due to their emotional problems. During this school year 40 children were on record as being excused from school for this reason. However, we have been told that 170 children are out of school in Philadelphia with medical excusals due to emotional problems. Therefore, it is obvious that many students who are not receiving an education are not officially reported to the Department of Education, and we have no idea how many of these children there may be in Pennsylvania.

In another report from the Department of Education several Intermediate Units do not have any classes for socially and emotionally disturbed children at the elementary level and about eight of the 29 Intermediate Units do not have any classes at the secondary level. Obviously it is preferable to maintain these children in regular classrooms when possible, but it is also obvious that some children do require a special program. Another problem that is difficult to assess is the placement of some children in special education programs for the retarded.

In Pennsylvania, the Consent Agreement on the Right to Education for mentally retarded children has put an additional financial burden on schools to establish programs for all retarded children and, therefore, classes for other handicapped children receive a lower priority.

In a hearing before a Pennsylvania legislative committee on Novemebr 20, 1973, John Pittenger, Secretary of the Pennsylvania Department of Education, stressed that pressure is being exerted to include all exceptional children under the consent agreement. He said although technically only the retarded are included "in fact the Consent Agreement does" extend to other exceptional children. He pleaded budgetary and administrative problems in being unable to include all exceptional children.

In legal opinions by Pennsylvania Attorney Generals in recent years and as stated in Senate Bill #6, the State has the responsibility to provide education for all handicapped children and the problem of insufficient funds should not be permitted to bear more heavily on the exceptional or handicapped child than on the normal child.

In Senate Bill #6 it is stated that Federal funds shall be used by the State to initiate, expand and improve educational services for handicapped children in conformance with a State plan. We also note in Senate Bill #6 that Federal funds made available under this act will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case supplant such State and local funds. We would urge close scrutiny of State programs and budgets to assure this would not happen.

We commend the requirement that an "individualized written program" would be required for each handicapped child and would be reviewed at least annually and amended when appropriate with the agreement of the parents or guardian of the handicapped child. We also agree with the due process procedures which would be afforded the parents or guardian.

Pennsylvania Mental Health, Inc., is proud to support Senate Bill #6 and stands ready, willing and able to lend any needed assistance toward ultimate passage and implementation of the philosophies contained in the bill.

We have appreciated the opportunity to present this testimony relative to Senate Bill #6. We would be willing to provide additional information if needed and to present additional testimony at any future hearings.

[The prepared statement of Mr. Whitaker follows:]

PREPARED STATEMENT OF DALE A. WHITAKER, DIRECTOR OF PROGRAM SERVICES, UNITED CEREBRAL PALSY OF PENNSYLVANIA

Mr. WHITAKER. Pennsylvania Association for Retarded Citizens must be given credit for instigating the court judgment relative to "Right to Education." However, due to their involvement, much interpretation of the court order rightfully deals with mental retardation. As you now know, I represent the cerebral palsied population for this inquiry. It would be an oversight not to mention that two-thirds of the cerebral palsied popultion is considered mentally retarded. It would be a great oversight not to point out that this Right to Education has had an impact on our population and delivery of services by our agencies.

Since Right to Education philosophy came into being, the caseloads for service has changed somewhat for UCP of Pennsylvania Affiliates. There has been a decrease in school age children to be served on a daily basis and an increase in infant and pre-school children. Naturally, this has not affected our adult population. Therefore, this has not only affected our programs but funding potentials. It can be stated that this transition of caseload and programming was done with not too many problems and may also be stated, a positive change.

However, a state UCP analysis of Right to Education after six months of existence indicated the following:

1. Special Education teachers were not trained to deal with all exceptionalities, especially the physically handicapped whether mentally normal or retarded. Thus, this indicates that their training on a college level was not adequate for the demand.
2. Facilities and equipment were inadequate.
3. Curriculums and programs were not appropriate.
4. Homebound instruction was not appropriate for most people physically handicapped.
5. Parents' needs were misinterpreted.

As time went on, some of our agencies worked with the intermediate units and/or school districts and favorable results were obtained. They collaborated to reach solutions to their problems. However, this was the exception rather than the rule. Frankly, the school districts did not have sufficient funds to handle all children eligible for services. There was no attempt to find funding to train existing staff, nor did they request help, nor did they cooperate with many of our agencies to train their staff. We, the people with expertise, were given lip service by many school administrators. Therefore, I strongly suggest that school districts cooperate with existing agencies who have not only professional staff but knowledge of the problems.

In summary, I would first like to point out that Federal funding should first deal with the problems of infants and pre-school children. The earlier you deal with the problems of infants and pre-school children the earlier they are receptive to learning. History has taught us that IQ's are not static and persons can learn to function and perform to some independence. Second, the child who is mentally normal but physically handicapped is a child who has been the great OVERSIGHT in American education and rehabilitation. Third, money must be expended for developing appropriate curriculums to train our special education teachers. In Pennsylvania each and every college makes up their own standards and content of curriculums in special education. There are no standards in this area of need. Fourth, as Senate Bill #6 suggests, all exceptionalities should be included in Right to Education. Last, there is need for funding to purchase proper equipment and facilities.

[The prepared statement of Mrs. Keller follows:]

PREPARED STATEMENT OF MRS. WILLIAM C. KELLER, PENNSYLVANIA EASTER SEAL SOCIETY FOR CRIPPLED CHILDREN AND ADULTS

Mrs. **KELLER**. Mr. Chairman and members of the Subcommittee on Labor and Public Welfare who, today, are addressing their attention to Senate Bill 6.

I am Esther Anne Keller, representing the views of the Easter Seal Society for Crippled Children and Adults of Pennsylvania, in support of Senate Bill 6. Throughout my adult life, I have been concerned with the problems of the handicapped, having served as a volunteer at all levels of the Easter Seal Society—local, state, and national—and am well acquainted with the philosophles, the objectives and the attainments of the Easter Seal Society as it has dealt with the myriad of concerns of the handicapped.

I am here today representing some 5,000 volunteers who have given of their time, talent and personal resources in the support of the Society's work in serving the physically disadvantaged. I represent their interest in and support of Senate Bill 6, that, if enacted, would provide financial assistance to the states for improved educational services for handicapped children.

Rather than to offer a layman's analysis of the proposed legislation, I should like to describe the influence of early education on the physically disadvantaged, and attempt to point out what it would mean to those in need, should Senate Bill 6 be successfully adopted.

The Pennsylvania Story. To give you a feel for the scope of concern of the Easter Seal Society for Crippled Children and Adults, I should like to present just a few statistics to underline not only the massiveness of the problem, but to detail, to some extent, the influence of a voluntary agency that has taken on the concerns of the physically disadvantaged.

In 1973, nearly 23,000 individuals were served in Pennsylvania through the Easter Seal program and its 44 local affiliates; there were 45,578 different services provided to those persons served in the local treatment facilities; the Society invested $2,771,000 in personnel to provide and suppotr the statewide direct service programs of the Easter Seal Societies; something in excess of $5,000,000 was generated to aid the Society in its efforts to assist handicapped persons achieve dignified, purposeful lives; $3.3 million was contributed through voluntary gifts to support the work of the Society, while only $926,761 was received through Government reimbursement programs.

14,854 youngsters between ages 0–21 received service from our local Pennsylvania Easter Seal Affiliates. 27 of these affiliates purchase or provide pre-school special education for the physically handicapped. In addition, our State Society was a pioneer in establishing summer resident camps, and our 25 year experience has clearly demonstrated the benefits, not only to the children, but to their families.

The Voluntary Agency and Special Education. Twenty-seven years ago, when I first became active in the work of the Pennsylvania Easter Seal Society, one could barely discern the beginnings of special education programs for crippled children. The Pennsylvania Society, however, even in its early beginnings, voiced concern and support for the education of the handicapped child. In those days, even progressive public school systems used almost any excuse to deny admittance to a handicapped child. And this attitude is, unfortunately, still in evidence in unexpected places. The Society was responsible for promoting the first special education legislation; in helping to underwrite the salaries of special education personnel, in pioneering special education classes for the atypical child, and in establishing teaching programs for the homebound. To undergird this effort, the Pennsylvania Easter Seal Society is constantly promoting the recruitment of promising young people for careers in special education programs.

While the public school system has been remarkably slow in assuming responsibility for serving handicapped children of school age, the Pennsylvania Society has moved toward the serving of pre-school handicapped children in the Comprehensive Rehabilitation Centers, Speech and Hearing Programs, and Pre-School Centers. We can testify to the rewarding results of preparing these children for entry into regular or special classes in the public school system. Of the 5,000 youngsters in the age bracket 0-5, a high percent of them are involved in our pre-school programs, and are receiving the kinds of experiences that will prepare them for a competitive position in the public school system, if that system will accept them. In our opinion, the passage of Senate Bill 6 will reduce to a minimum the rejection of these children. Statistics tell but a part of the whole story of special education. We believe, in Easter Seals, that special education goes beyond cognitive learning. Special education, in our opinion, helps shape the handicapped child's capacity to cooperate with other children and to compete with them, and it is preparation for adult living and for future employment. We have learned that, important as it may be, teaching kids to walk is *not* the most important thing we do. These youngsters need help to build characters with stamina to endure—and to triumph. They need an education that will furnish the inside of their heads and will provide them with commerciable skills. For too long, the private sector has been struggling alone to provide these things.

Our pre-school programs have demonstrated that progress is more rapid if the child has an opportunity for education, socialization, and supervised group activity at an early age, and if provision is made for involving parents in the program. Much that has been learned from the Head Start Program for the culturally deprived children, among whom we list our rapidly growing caseload basic to the realization of an education program adapted to the individualized needs of these youngsters.

Cooperation: The Private and Public Sectors. The Pennsylvania Easter Seal Society has long enjoyed a good relationship with the Bureau of Special Education within the Department of Education. While the Society has attempted to be responsive to the needs of the Bureau, it has, at the same time, had to act independently when the structure and monetary resources were not sufficiently flexible to meet the needs of those youngsters whom we hold in mutual concern. The Easter Seal Society, through its pre-school programs, has demonstrated beyond doubt the value of early identification and early educational programming for the atypical child, and the Bureau for Special Education has been responsible and stepped up its efforts to garner more fiscal support for these programs.

Passage of Senate Bill 6 will enhance the opportunities for proper and appropriate implementation, for surely, the fiscal responsibility cannot be fairly borne by the State alone. The proper and extensive education of personnel, the purchase and maintenance of specialized equipment, the necessary changes in the existing physical structures to accommodate the wheelchairs, the crutches, etc., are all beyond the financial reach of many of the states, and while commitment by the state is there, the means to accomplish the fact are often lacking, and the passage of Senate Bill 6 will insure, at least in part, that the commitment can be met.

Parenthetically, we respectfully call your attention to the fact that it does no good to make provisions for access to education while constructing buildings that deny that access. We would hope Senate Bill 6 will address itself to this situation.

One of the major concerns of the Easter Seal Society is that once again, the families of the handicapped child, upon learning of this kind of effort, believe that at last there will be solutions close at hand to the myriad problems they face. I personally struggle with the frustrations and disappointments on the part of these families when they learn that, in spite of the monumental effort, the needs as they know them are not or cannot be satisfied, and the frustrations multiply and the disappointments and hurt become deeper. It is therefore our hope that the passage of Senate Bill 6 will, in addition to providing the necessary funding, also require that the intent is met by the agencies involved.

I have every confidence that if the existing cooperative spirit between the public and private sectors continues, we have a better than even chance of satisfying the needs and the hopes and the wishes of those families who are directly concerned with the management, the education, of a child who is physically disadvantaged. As the representative of the Easter Seal Society of Pennsylvania, I pledge our continuing support. We will exercise all possible influence in making this program work, for the obvious objectives of Senate Bill 6 are the objectives of every Easter Seal Society in Pennsylvania. We all want every handicapped child to live a life of dignity and to prepare him in the best way possible to be a productive and contributing member of society.

We of the Easter Seal Society believe that we have, through the voluntary effort, ably demonstrated the value of education for the severely handicapped and believe it is now time that the influence of the Federal and State Government, with its resources, pick up the responsibility and permit the voluntary sector to move on to other needs.

In reviewing the commentary made by Senator Williams to the Senate on February 19, I was pleased to note that in addition to being pragmatic about the problem of education for handicapped children, he also indicated the need for visionary thinking. He alluded to the fact that more than 50% of the known 7 million handicapped children in this country are without special education services. The recent court decisions have abolished any debate relative to the right of a child to a free public education. We firmly believe that the enactment of Senate Bill 6 will make possible the education of these children who are presently receiving inadequate or no educational services.

Mr. Chairman, we are all handicapped—

to be handicapped is to be normal—but the only way we can meet the very special needs of the very special group spelled out in Senate bill 6 is to guarantee them in the way this proposed bill does.

Education is not a privilege that can be granted or withdrawn. Education is a right that our Nation cannot afford to deny anyone. We support Senate bill 6 because it makes possible the attainment of these objectives.

Senator SCHWEIKER. At this time I order all statements and other pertinent material submitted to the committee by persons unable to attend this hearing be printed in the record.

Bethlehem Area School District
EDUCATION CENTER
2307 Rodgers Street
Bethlehem, Pennsylvania 18017

March 15, 1974

TELEPHONE: (215) 865-5511

The Hearing on Senator Harrison Williams'
Subcommittee on Senate Bill #6, Education
for All Handicapped Children

Mr. Chairman and Members of the Subcommittee:

I wish you to know that I strongly support Senate Bill #6. I regret that other compelling commitments will not permit me to appear before your subcommittee to give personal testimony.

As your own research has indicated, thousands of handicapped children and youth in Pennsylvania are not provided adequate educational services. In many instances, services are nonexistent for these young people.

While our Commonwealth is not among the nations backward states in concern for education of the handicapped, the fact remains that state and local resources are agonizingly finite, and more than a third of our handicapped young people do not get the education and training they need and deserve. The Williams Bill, providing for a 75 percent excess cost reimbursement to states for the education of handicapped children, could become landmark federal legislation which commits this nation anew to providing appropriate education for all its citizens.

Thank you for hearing my views on this important matter.

Sincerely,

William A. Bost

William A. Bost
Superintendent of Schools

WAB:cas

PREPARED STATEMENT OF ANN EVANS

I am Ann Evans, an occupational therapist now with the Holy Spirit Hospital Community Mental Health Center in Camp Hill, Pennsylvania. Formerly I was the Occupational Therapy Consultant for the Office of Mental Retardation, Department of Public Welfare. I am the current chairman of the Developmental Disabilities Special Interest Group of the American Occupational Therapy Association. I am representing the American Occupational Therapy Association and wish to endorse S. 6, the Education for All Handicapped Children Act.

We fully support the consumer and parent groups who have brought this problem to the public's attention, and applaud the action of the courts in writing this landmark decision as well as the activities of the Department of Education in developing and implementing COMPILE (the Commonwealth Plan for Education & Training of Mentally Retarded Children) and COMPET (the Commonwealth Plan for Education and Training of Mentally Retarded Children).

The children in question are, indeed, "special children" who need all of the resources we can muster to enable them to lead rich and fulfilling lives. A simple device to help hold a pencil or crayon; a special position to help turn a head toward learning; the strengthening of specific muscle groups so essential to accomplishing self-care skills vital to self-respect and a meaningful life; - one of these may help these children make a valuable contribution to our society.

These handicapped children need a range of expertise in order to function at their highest level. The occupational therapist is one of several experts eager to supplement, complement and enhance the efforts of the educators in helping all children reach their maximum potential. The task at hand is challenging and rewarding. The total effort is costly and calls for cooperation among education, health, welfare, and other agencies concerned with all children.

Take steps for your Child's right to education

Identification STEP 1 ▶

Registration STEP 2 ▶

Testing STEP 3 ▶

Agreement STEP 4 ▶

Hearing STEP 5 ▶

The Pennsylvania Association for Retarded Children, Inc.

Education is theirs by right

...not by chance

...nor by grace

Thomas K. Gilhool, Esquire
October 8, 1971

THE RIGHT TO EDUCATION . . . What does it mean to you and your retarded child?

It means that whether your child is living at home, with relatives, friends, guardians or foster parents, whether he is in a group home, if he is in a temporary home, waiting to be admitted to a state institution, on a waiting list for a state institution; or if he is a resident of an institution; beginning no later than September, 1972 ***every*** mentally retarded child, below 21 years of age, who is a resident in the Commonwealth of Pennsylvania, ***must*** be provided with a free public program of education and training that is appropriate to his learning capacities.

Today, education and training of mentally retarded children in Pennsylvania is a right . . . Not a privilege.

Your retarded child can be educated
Your retarded child should be educated
Your retarded child will be in class or an educational program by September, 1972

...if...

You take the "Steps" listed in this booklet

- Each step is outlined for you in detail.
- Each step will bring your child closer to the day when he or she will be in school.
- Each step is part of what you must do to make sure that your child gets the "Right to Education."

The Pennsylvania Association for Retarded Children, and your local chapter, will walk along with you, step by step, to make sure that your child is not turned away from school.

Sample Letter

Your address
Date

(Name) School Superintendent
(Name) School District
City, State, Zip Code

Dear Sir:

This is to notify you that our son (daughter), (Child's name) has been diagnosed as mentally retarded. He (She) was born on (month, day, year) and now requires a program of education and training appropriate to his (her) abilities.

Would you please schedule (Child's name) for an evaluation as soon as possible.

Thank you.

Sincerely,

Send 1 copy of this letter to each of the offices listed below:

Secretary of Education
Harrisburg, Pa.

Your local County Chapter of THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN at the address listed on the back of this booklet.

Send the letter certified mail with a return receipt. Keep one copy for yourself as proof that the letter was sent. Keep the signed receipt when you receive it from the school. This is proof that they received your letter.

STEP 1 Identification

Although your school district is required to find all exceptional children from birth to 18 and to plan facilities and programs for them—don't count on it! Unless you tell the school district that your child is not in a school program or a training program, or receiving instruction in your home, they will not know that he exists!

The easiest and surest way to let your school district know that your child is ready for school or some type of educational program is to send them a letter. A sample letter, which you can copy, is printed on the opposite page. This letter will ***identify*** your child to the school district, and ***notify*** them that your child is mentally retarded and needs special education and training.

This letter also asks the school district to make an appointment to have your child tested. The school district should then call you, or send you a letter telling you when you should bring your child in to be tested.

Make four copies of this letter. Send one to your school superintendent, and one to: The Secretary of Education, Harrisburg, Pa. Send the letter certified mail with a return receipt to your school district. This is to make sure that the letter is not lost and that the school is notified. The school should return the receipt to you, signed. This is proof that they have received your letter. Keep one copy of the letter for yourself and the signed receipt.

1 ▶

Send one copy of your letter to your local chapter of THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN at the address on the back of this booklet. If you have any questions about Step 1, call your local chapter of the PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN. They will help you!

STEP 2 Registration

After you have written a letter to your school district notifying them that you have a mentally retarded child who should be in school, or should be getting some kind of special training program, the next step is to register him in your neighborhood school.

Call or visit the school and tell them that you want to register your child. Have the child's birth certificate and his vaccination certificate with you. Fill out the registration form and make sure that you state that your child is mentally retarded.

You can register your child anytime. Most school districts register children in April or May, but if your child is not in your neighborhood school, he can and should be registered at any time by the school office. This is another way of letting your school district know that your child is not in school or receiving any training.

◀ 2

The school should then notify you of a time for an appointment for testing and placement in a special class, or for someone to come to your home to work with your child.

IF YOU DO NOT HEAR FROM YOUR SCHOOL DISTRICT BY LETTER OR PHONE:

CONTACT YOUR LOCAL CHAPTER OF THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN

at the address and phone the number listed on the back cover of this booklet.

STEP 3 Testing

Your school district should test your child in order to find out what type of special class he should be placed in. The test will be given to your child by a school psychologist, who will either test him at school or in your home. The school should contact you and set up a time and place for this test.

After your child has been tested, the school should let you know, in writing, at an interview, or by a letter to you, what type of class they believe your child should be in, or what type of educational training they will give your child at home, or in a special school, training program, or day care center.

Read this recommendation over very carefully. Make certain that you understand just what type of training and education your child will be receiving. Ask your doctor, or anyone who has worked with your child if they feel that this is the right program for your child to be in.

You know your child better than anyone else. If you feel that the class or training program recommended by the school is not the ***best*** one for your child; that he would learn more or be helped more by another type of program, then you have the ***right*** to disagree with the school's plan. If you agree to your child's placement, you may be asked to sign a "Hearing Waiver." Even if you sign the waiver, you have 5 days in which to change your mind and request a hearing. (See step 5)

3 ▶

THE SCHOOL ***MUST*** PROVIDE A PROGRAM OF EDUCATION OR TRAINING FOR YOUR CHILD THAT IS ***APPROPRIATE*** TO HIS ABILITIES! THEY ***CANNOT*** TELL YOU THAT THERE IS NO CLASS OR ANY OTHER TRAINING OR EDUCATIONAL PROGRAM FOR YOUR CHILD!

If you have any questions about Step 3, please contact your local chapter of THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN, at the address and phone number listed on the back cover of this booklet.

Sample Letter

Your address
Date

(Name) School Superintendent
(Name) School District
City, State, Zip Code

Gentlemen:

This is to advise you that we, the parents of (your child's name) do not agree with your planned placement of our child in the program you have outlined for (your child's name).

We, therefore, in accordance with the Federal Court Order of June 18, 1971, Civil Action 71-42, request a hearing on the placement of our child.

Would you please notify us as to the time and place of this hearing within the specified time limit.

Sincerely,

Send 1 copy of this letter to each of the offices listed below:

Secretary of Education
Harrisburg, Pa.

Your local County Chapter of THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN at the address listed on the back of this booklet.

Send the letter certified mail with a return receipt. Keep one copy for yourself as proof that the letter was sent. Keep the signed receipt when you receive it from the school. This is proof that they received your letter.

STEP 4 Agreement

After your child has been tested, the school district should give you an interview or send you a letter stating what type of class or training program your child will be in.

If you disagree with your child's assignment; if you feel that your child should be in a different type of class, you should let your school district know.

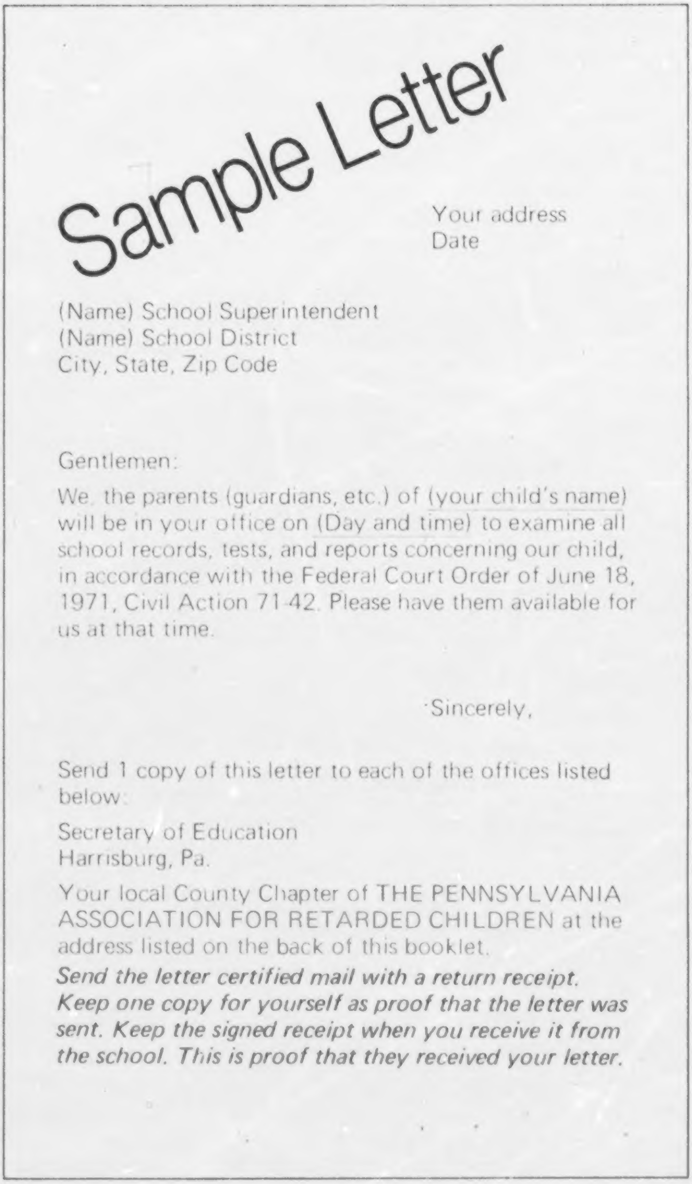
When the school district gives you an interview or sends you a letter letting you know what kind of program your child will be in, they should also send you a card to sign which says that you either agree or disagree with the placement of your child. If you agree, sign the card and send it to the school. If you ***do not agree***, send a letter to the school, and tell them that you are requesting a hearing because you do not feel that your child is being placed in the right class, or training program. A sample letter, which you can copy, is printed on the opposite page. UNDER THE LAW, THE PARENT OF A RETARDED CHILD HAS THE RIGHT TO ASK FOR A HEARING IF HE FEELS THAT HIS CHILD HAS NOT BEEN PLACED IN THE CLASS OR TRAINING PROGRAM WHICH IS BEST FOR THE CHILD. EVEN IF YOU SIGN THE PAPER TO WAIVE THE HEARING, YOU HAVE 5 DAYS TO "THINK IT OVER" AND TO REQUEST A HEARING.

Send the letter requesting the hearing to your school district by certified mail with a return receipt. Keep a copy for yourself.

IF YOU REQUEST A HEARING FOR YOUR CHILD, YOU WILL NEED HELP. Your local chapter of the PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN ***can*** help you, and will represent you and your child at the hearing in your school district. There is no cost to you for this service.

4 ▶

IF YOU REQUEST A HEARING, GET IN TOUCH WITH YOUR LOCAL CHAPTER OF THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN, AT THE ADDRESS AND PHONE NUMBER LISTED ON THE BACK COVER OF THIS BOOKLET.



Sample Letter

Your address
Date

(Name) School Superintendent
(Name) School District
City, State, Zip Code

Gentlemen:

We, the parents (guardians, etc.) of (your child's name) will be in your office on (Day and time) to examine all school records, tests, and reports concerning our child, in accordance with the Federal Court Order of June 18, 1971, Civil Action 71-42. Please have them available for us at that time.

Sincerely,

Send 1 copy of this letter to each of the offices listed below:

Secretary of Education
Harrisburg, Pa.

Your local County Chapter of THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN at the address listed on the back of this booklet.

Send the letter certified mail with a return receipt. Keep one copy for yourself as proof that the letter was sent. Keep the signed receipt when you receive it from the school. This is proof that they received your letter.

STEP 5 Hearing

After you have requested a hearing, you have the right to examine all of the school's records on your child, (his test scores, reports, or any other information in your child's file). You must, again, write a letter to your school district telling them that you want to examine all of your child's records. Tell them what day and time you will be there, and ask them to have your child's file ready for you to look at. A sample letter, which you can copy, is printed on the opposite page.

The school should notify you of the day and time for the hearing. You can attend the hearing alone, or you can bring witnesses with you. You can bring people with you who know your child, such as a doctor, a social worker, a case worker, or a teacher. You can also have with you someone who can give you legal advice.

THE HEARING PROCESS HAS BEEN SET UP TO GIVE *YOU*, THE PARENT, AN OPPORTUNITY TO SPEAK FOR YOUR RETARDED CHILD. THE HEARING MUST BE HELD BEFORE A PERSON WHO *CANNOT* BE AN EMPLOYEE OF THE SCHOOL DISTRICT.

If you must request a hearing to make sure that your child is placed in a class or training program that is best for him, please contact: YOUR LOCAL CHAPTER OF THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN, AT THE ADDRESS AND PHONE NUMBER LISTED ON THE BACK COVER OF THIS BOOKLET. Your chapter will have people who can give you advice and people who will be with you at the hearing. There is no cost to you for this service.

THE HEARING MUST BE HELD IN A PLACE NEAR YOUR HOME, AT A TIME WHEN YOU ARE ABLE TO BE THERE!

5 ▶

If your School District says "No"

If you have applied for an education or training program for your retarded child, and the school district gives you *any* reason for ***NOT*** placing your child in class, or in a training program, or with homebound instruction, YOU HAVE A RIGHT TO REQUEST A HEARING. YOUR CHILD'S ***RIGHT*** TO A FREE PUBLIC EDUCATION HAS BEEN VIOLATED!

DO NOT accept any of the following reasons for denying an education to your retarded child.

1. We do not have classes for retarded children.
2. We do not have room in our class to include your retarded child.
3. We do not take retarded children until they are 8 years old.
4. We do not accept retarded children who have not reached a mental age of 5 years old.
5. We do not have classes for junior or senior high school age retarded children.
6. We do not accept retarded children who are not toilet trained.
7. We do not accept retarded children who are behavior problems.
8. We do not accept retarded children who have other handicaps (such as hearing loss, cerebral palsy, etc.).

9. We do not have pre-school classes or kindergartens for retarded children.
10. We do not accept retarded children who cannot walk.
11. We do not have enough money to provide classes for retarded children.
12. We shall put your retarded child on a waiting list.
13. We will stop our programs for other retarded children if you make trouble for us.
14. We will postpone your child's admission and let you know when he can come to school.
15. We are not going to educate or provide a training program for your retarded child.
16. Your child can no longer benefit from any education or training.
17. We cannot send a teacher to your home to work with your retarded child.

IF YOUR SCHOOL DISTRICT SAYS "NO" FOR ANY OF THE ABOVE REASONS, OR FOR ANY REASON, PLEASE CONTACT YOUR LOCAL CHAPTER OF THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN AT THE PHONE NUMBER AND ADDRESS LISTED ON THE BACK COVER OF THIS BOOKLET.

The right to education and your pre-school child

If your school district provides a pre-school or kindergarten program for other children in your community; or if there is any public, tax-supported program operated by either the Department of Education or the Department of Welfare for children, then your mentally retarded child has a right to be in a class or a training program for pre-school children, too.

Pre-school is very important for the retarded child. In a pre-school, the 3, 4, or 5-year old retarded child can begin to learn things which will help him to fit into classes as he grows older. He can learn to feed and dress himself; he can be toilet trained; he can learn to sit still in class and listen to a teacher; he can learn to share with other children, and how to play with other children. Most children learn these things in nursery school, in day care programs, and kindergarten. Your retarded child, too, ***can*** and ***should*** be in this type of school. REMEMBER, THE SOONER YOUR CHILD IS IN SCHOOL, THE BETTER OFF HE WILL BE IN LATER YEARS!

Call your school district and find out about pre-school programs for other children. If there is a pre-school class in your school district for normal children, they must also have a class for your retarded child.

IF YOU HAVE ANY QUESTIONS ABOUT PRE-SCHOOL PROGRAMS FOR YOUR RETARDED CHILD, PLEASE CONTACT YOUR COUNTY CHAPTER OF
THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN
AT THE PHONE NUMBER AND ADDRESS LISTED ON THE BACK COVER OF THIS BOOKLET.

The Pennsylvania Association
for Retarded Children
will work with you
to guarantee your
mentally retarded child's
right to education!

step by step

IF YOU NEED HELP . . . ALONG THE WAY . . .
CONTACT
YOUR LOCAL CHAPTER OF THE

PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN AT THE ADDRESS AND PHONE NUMBER LISTED ON THE BACK COVER OF THIS BOOKLET: OR WRITE:

THE PENNSYLVANIA ASSOCIATION FOR
RETARDED CHILDREN, INC.
HARRISBURG, PENNSYLVANIA, 17101

PUBLISHED BY:

THE PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN, INC.

117 North Second Street
Harrisburg, Pa. 17101
Phone: (717) 238-4767

Directory of PARC Chapters

Pennsylvania Association for Retarded Children, Inc
112 North Second Street * Harrisburg Pa 17101

Adams County Chapter
Walter J. Kachele, President
R. D. #4
Hanover, Pa. 17331
717/633-9729

Allegheny County Chapter, PARC
917 Brighton Road
Pittsburgh, Pa. 15233
Attn: Executive Director
412/322-6008

Armstrong County Chapter
Mrs. June Roberson, President
118 Market Street
Kittanning, Pa. 16201
412/543-7441

Beaver County Chapter
648 Third Street
Beaver, Pa. 15009
Attn: Executive Secretary
412/775-1602

Bedford County Chapter, PARC
527 S. Richard Street
Bedford, Pa. 15222
Attn: Executive Secretary
814/623-5769

Berks County Chapter
2201 Reading Avenue
West Wyomissing, Pa. 19609
Attn: Executive Director
215/678-2780

Blair County Chapter
1814 Walton Ave
Altoona, Pa. 16602
Attn: Executive Director
814/942-1777

Bradford County Chapter
Mrs. Robert H. Severn, President
302 Chemung St
Sayre, Pa. 18840
717/883-0165

Bucks County Chapter
20 West Oakland Ave
Doylestown, Pa. 18901
Attn: Executive Director
215/348-3534

Butler County Chapter
Bldg. #78, V. A. Hospital
Butler, Pa. 16001
Attn: Executive Director
412/284-3274

Cambria County Chapter
Mrs. Thomas J. Schaefer, President
565 Heidelberg Lane
Johnstown, Pa. 15905
814/255-3868

Cameron County Chapter
Samuel D. Regester, D.D., President
204 E. 4th St
Emporium, Pa. 15834
814/486-3061 483-8401

Carbon County Chapter
110 Broadway
Jim Thorpe, Pa. 18229
Attn: Exec. Sec.
215/377-2051

Center County Chapter
Dr. Leon Gorlow, President
622 Franklin St
State College, Pa. 16801
814/865-1711

Chester County Chapter
20 N. High St
West Chester, Pa. 19380
Attn: Exec. Dir
215/696-0728

Clearfield County Chapter
John McClure, President
137½ E. Scribner Ave
DuBois, Pa. 15801
814/371-3329

Clinton County Chapter
Mrs. Clair Johnson, President
Beech Creek, Pa. 16822
717/962-2335

Crawford County Chapter
c/o Northwest Pa
Bank & Trust Co
Meadville, Pa. 16335
Attn: Exec. Sec
814/337-4291

Cumberland County Chapter
100 West Louther St
Carlisle, Pa. 17013
Attn: Exec. Dir
717/249-2611

Dauphin County Chapter
112 N. 2nd St
Harrisburg, Pa. 17101
Attn: Exec. Dir
717/234-7223

Delaware County Chapter
147 S. Lansdowne Ave
Lansdowne, Pa. 19050
Attn: Exec. Dir
215/622-2220

Elk County Chapter
Roy Johnson, President
697 Washington Rd
St. Marys, Pa. 15857
814/781-6342

Erie County Chapter
c/o Exceptional Children Center
136 East Ave
Erie, Pa. 16507
Attn: Executive Advisor
814/456-5345

Fayette County Chapter
66 Lebanon Ave
Uniontown, Pa. 15401
Attn: Exec. Dir
412/438-9042

Franklin County Chapter
Lawrence Newman, President
Box 127, Fort Loudon, Pa. 17224
717/369-3509

Greene County Chapter
P.O. Box 290
Waynesburg, Pa. 15370
Attn: Exec. Sec
412/627-8191

Huntingdon County Chapter
Mary M. Rosenborough, Pres
408 S. Division St
Mt. Union, Pa. 17066
814/542-4600

Jefferson County Chapter
Mrs. Rachel Grubbs, President
Lanes Mill Road
R. R. 2, Brockway, Pa. 15824
814/265-0663

Juniata County Chapter
R. D. #2
McAlisterville, Pa. 17043
Attn: Exec. Sec.
717/463-2776

Lackawanna County Chapter
475 Morgan Highway
Scranton, Pa. 18508
Attn: Exec. Dir
717/346-4010

Lancaster County Chapter
630 Janet Ave
Lancaster, Pa. 17601
Attn: Exec. Dir
717/394-5251

Lawrence County Chapter
Col. James Galleghèr, President
7 S. Mill St.
P.O. Box 405
New Castle, Pa. 16103
412/654-4283

Lehigh County Chapter
604 N. 8th St
Allentown, Pa. 18102
Attn: Exec. Secretary
215/434-8076

Luzerne County Chapter
63 N. Franklin St
Wilkes-Barre, Pa. 18701
Attn: Exec. Dir
717/824-7682

McKean County Chapter
437 W. Main St
Smethport, Pa. 16749
Attn: Exec. Sec
814/887-2953

Mercer County Chapter
P.O. Box 1108
Sharon, Pa. 16146
Attn: Exec. Dir
412/981-2950

Mifflin County Chapter
Mrs. John Ganoe, Pres
150 N. Walnut St
Lewistown, Pa. 17044
717/248-5360

Monroe County Chapter
Mrs. Lucille Miller, Pres
101 Maple St
Stroudsburg, Pa. 18360
717/424-0955

Montgomery County Chapter
73 E. Main St
Norristown, Pa. 19401
Attn: Exec. Dir
215/272-0314

Northumberland Co. Chap
West End Nat'l Bank Bldg
2nd & Walnut Sts
Shamokin, Pa. 17872
Attn: Exec. Dir
717/648-2871

Philadelphia County Chapter
1211 Chestnut St
Phila., Pa. 19107
Attn: Exec. Dir
215/567-3750

Schuylkill County Chapter
Hon. Vincent J. Dalton, President
396 S. Centre St
Pottsville, Pa. 17901
717/622-2980

Snyder County Chapter
Mrs. Sally B. Thomas, Pres
R. D. 3, Selinsgrove, Pa. 17870
717/374-6637

Somerset County Chapter
Floyd C. Bender, President
R. D. 1, P.O. Box 186
Meyersdale, Pa. 15552
814/662-1841

Union County Chapter
605 Walnut St
Mifflinburg, Pa. 17844
Attn: Nancy Thomas
717/966-0015

Venango County Chapter
William B. Knox, Pres
432 Woodland Dr
Franklin, Pa. 16323
814/432-4289

Warren County Chapter
Charles Fasciana, President
P.O. Box 244
Warren, Pa. 16365
814/723-9294

Washington County Chapter
James L. Lockerman, Pres
664 E. Beau St
Washington, Pa. 15301
412/222-8963

Wayne County Chapter
Mrs. Donald Myers, Pres
R. D. 2, Honesdale, Pa. 18431
717/253-0617

Westmoreland County Chapter
Greensburg Savings & Loan Bldg.
2nd Floor, 125 S. Main St
Greensburg, Pa. 15601
Attn: Exec. Dir
412/837-8159

Wyoming County Chapter
Harold Ransom, Pres
R. D. 1
Tunkhannock, Pa. 18657
717/836-1610

York County Chapter
240 E. Haymeadow Dr
York, Pa. 17402
Attn: Exec. Dir
717/764-2852

Litho in U.S.A.

"**In these days,** it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

Chief Justice Earl Warren
The Brown Decision, 1954

The Pennsylvania Association for Retarded Children, Inc.
112 North Second St. Harrisburg, Pa. 17101 Telephone: (717) 238-4767

FACT SHEET

The Right to Education

The Right to Education

Civil Action No. 71-42 in U. S. District Court, Eastern District of Pa.

This order, injunction and consent agreement was signed October 7, 1971 and it:

1. Establishes a "zero reject" system of free public education and training for mentally retarded persons between the ages of six and twenty-one years. NO SCHOOL DISTRICT MAY POSTPONE, TERMINATE, OR IN ***ANY*** WAY DENY THE RIGHT TO A PROGRAM OF FREE PUBLIC EDUCATION AND TRAINING TO ***ANY*** RETARDED CHILD.

2. Provides that no child's educational assignment may be changed without notice to the parents or guardians, and establishes that an opportunity for a hearing regarding the appropriateness of the recommended changes must be granted to the parents or guardians.

3. ESTABLISHES THAT EVERY RETARDED CHILD CAN BENEFIT FROM A PROGRAM OF EDUCATION AND TRAINING no matter what label based on I.Q. (educable, trainable, or profoundly retarded) has been applied to the child.

4. ESTABLISHES THAT THE MENTAL AGE OF A FIVE YEAR OLD CAN ONLY APPLY AS A CRITERION FOR CHILDREN ENTERING THE LOWEST ***REGULAR*** primary class above kindergarten and CANNOT BE APPLIED TO CHILDREN ENTERING SPECIAL CLASSES.

5. COMPELS parents to place the retarded child in a school program between the ages of 8 and 17.

6. PERMITS a mentally retarded child to enter school, if the parent elects, prior to age 8, and to remain in school beyond the age of 17, if the parent elects.

7. MAKES PUBLIC FUNDED PRE-SCHOOL PROGRAMS AVAILABLE TO MENTALLY RETARDED CHILDREN prior to 6 years of age wherever there is a public pre-school program for normal children prior to 6-years of age.

8. EXPANDS THE TERM "BRAIN DAMAGED" to include all mentally retarded children, thus making the retarded eligible for payment of tuition for day school and tuition and maintenance for residential school up to $4200.00.

9. DECLARES THAT A MENTALLY RETARDED CHILD, WHETHER OR NOT PHYSICALLY DISABLED, MAY RECEIVE A MINIMUM OF 5 HOURS PER WEEK OF HOMEBOUND INSTRUCTION, and also states that homebound instruction is the least desirable alternative to a classroom situation and must be re-evaluated not less than every three months.

10. REQUIRES THE RETARDED CHILD TO BE PLACED IN A PUBLIC PROGRAM OF EDUCATION AND TRAINING ***APPROPRIATE*** TO THE CHILD'S CAPACITY, and states that placement in a regular class is preferable to placement in a special class and placement in a special class is preferable to placement in any other type of program.

SPECIAL EDUCATION
PROGRAMS/SERVICES
1972–1973

PENNSYLVANIA DEPARTMENT OF EDUCATION

Commonwealth of Pennsylvania

Milton J. Shapp, Governor

Department of Education

John C. Pittenger, Secretary

Office of Basic Education

Donald M. Carroll, Jr., Commissioner
Harry K. Gerlach, Deputy Commissioner

Bureau of Special and Compensatory Education

Ferman B. Moody, Director

Pennsylvania Department of Education
Box 911
Harrisburg, Pa. 17126

Statistical data contained in this report reflect total special education programs and services in the public schools of the Commonwealth of Pennsylvania as of December 1, 1972. These data are derived from Annual Special Education Program/Services Reports (DPEB-284) submitted to the Department of Education by 29 intermediate units and 320 districts.

Of the statewide total of 7,239 classes and/or teachers and 169,873 pupils, 4,690 classes and 121,930 pupils are in programs operated by intermediate unit boards of school directors. Programs operated by school districts account for 2,549 classes and 47,943 pupils.

Combined Intermediate Unit/District Totals

BEST COPY AVAILABLE

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

DEBE-383 (12-69) Page 1

Elementary ☒
Secondary ☒
Other Combined

T - Teachers/Classes
P - Pupils

School District	Detention		Mentally Retarded: Educable		Mentally Retarded: Trainable		Physically Handicapped		Brain Injured		Socially & Emotionally Disturbed		Hearing Impaired		Visually Impaired		Gifted & Talented		Speech Correction		Total	
	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
Intermediate Unit																						
Elementary	17	406	685	8940	466	4905	142	1486	414	3896	220	1480	161	1729	100	1075	170	4086	763	62507	3138	90510
Secondary	79	2578	849	14311	179	2165	37	369	33	344	107	806	20	596	32	569	167	4134	49	5548	1552	31420
TOTAL	96	2984	1534	23251	645	7070	179	1855	447	4240	327	2286	181	2325	132	1644	337	8220	812	68055	4690	121930
District																						
Elementary	-	-	788	10185	99	1213	21	222	85	1150	69	646	12	105	8	83	79	1560	175	13993	1336	29157
Secondary	-	-	843	14232	111	373	8	108	11	172	33	348	3	35	2	30	181	2242	21	1248	1213	18788
TOTAL	-	-	1631	24417	210	1586	29	330	96	1322	102	994	15	140	10	113	260	3802	196	15241	2549	47945
STATE WIDE																						
Elementary	17	406	1473	19125	565	6118	163	1708	499	5046	289	2126	173	1834	108	1158	249	5646	938	76500	4474	119667
Secondary	79	2578	1692	28543	290	2538	45	477	44	516	140	1154	23	631	34	599	348	6376	70	6796	2765	50208
TOTAL	96	2984	3165	47668	855	8656	208	2185	543	5562	429	3280	196	2465	142	1757	597	12022	1008	83296	7239	169875

Intermediate Unit/District Elementary Programs

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

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Elementary ☒
Secondary ☐
Other

T - Teachers Classes
P - Pupils

School District	Detention		MENTALLY RETARDED				PHYSICALLY HANDICAPPED		BRAIN INJURED		SOCIALLY & EMOTIONALLY DISTURBED		HEARING IMPAIRED		VISUALLY IMPAIRED		GIFTED & TALENTED		Speech Correction		Total	
			EDUCABLE		TRAINABLE																	
	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
IU 1	-	-	6	66	17	151	5	48	4	25	6	36	9	138	4	77	-	-	51	5059	102	5600
District	-	-	68	916	2	17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	70	933
TOTAL	-	-	74	982	19	168	5	48	4	25	6	36	9	138	4	77	-	-	51	5059	172	6533
IU 2	-	-	85	1530	16	288	17	204	10	95	19	152	11	84	8	100	-	-	28	2100	194	4553
TOTAL	-	-	85	1530	16	288	17	204	10	95	19	152	11	84	8	100	-	-	28	2100	194	4553
IU 3	-	-	64	661	23	224	10	113	62	334	29	152	19	39	18	25	-	-	77	5602	302	7150
District	-	-	17	194	2	27	1	8	3	26	4	30	-	-	-	-	1	106	30	2137	58	2528
TOTAL	-	-	81	855	25	251	11	121	65	360	33	182	19	39	18	25	1	106	107	7739	360	9678
IU 4	-	-	16	158	16	161	-	-	8	50	2	11	-	-	1	29	-	-	21	1861	64	2270
District	-	-	37	480	7	70	2	15	-	-	1	6	3	26	-	-	-	-	11	1208	61	1805
TOTAL	-	-	53	638	23	231	2	15	8	50	3	17	3	26	1	29	-	-	32	3069	125	4075
IU 5	-	-	22	276	11	115	6	43	11	88	7	72	4	44	-	-	2	54	15	1232	78	1924
District	-	-	40	556	5	52	5	47	6	43	3	20	5	31	3	20	-	-	54	1333	121	2102
TOTAL	-	-	62	832	16	167	11	90	17	131	10	92	9	75	3	20	2	54	69	2565	199	4026
IU 6	-	-	3	49	7	79	1	9	1	8	1	8	-	-	2	36	-	-	15	1612	30	1801
District	-	-	31	417	1	15	-	-	-	-	-	-	-	-	-	-	-	-	2	90	34	522
TOTAL	-	-	34	466	8	94	1	9	1	8	1	8	-	-	2	36	-	-	17	1702	64	2323
IU 7	-	-	45	501	18	186	2	20	2	21	1	7	8	81	3	42	63	416	35	3564	177	4838
District	-	-	7	88	-	-	-	-	1	100	-	-	-	-	-	-	1	70	-	-	9	258
TOTAL	-	-	52	589	18	186	2	20	3	121	1	7	8	81	3	42	64	486	35	3564	186	5096
IU 8	-	-	36	438	17	169	5	42	22	211	7	54	7	44	1	24	13	781	27	2117	135	3880
District	-	-	29	402	3	45	1	9	2	23	-	-	-	-	-	-	4	101	5	387	44	967
TOTAL	-	-	65	840	20	214	6	51	24	234	7	54	7	44	1	24	17	882	32	2504	179	4847
IU 9	-	-	19	210	4	34	1	6	9	133	1	5	1	11	-	-	-	-	13	1162	48	1561
District	-	-	5	70	2	26	-	-	-	-	-	-	-	-	-	-	-	-	1	206	8	302
TOTAL	-	-	24	280	6	60	1	6	9	133	1	5	1	11	-	-	-	-	14	1368	56	1863

BEST COPY AVAILABLE

Commonwealth of Pennsylvania - Department of Education

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SPECIAL EDUCATION PROGRAMS/SERVICES

Elementary ☒
Secondary ☐
Other

T - Teachers/Classes
P - Pupils

School District	Detention		MENTALLY RETARDED EDUCABLE		MENTALLY RETARDED TRAINABLE		PHYSICALLY HANDICAPPED		BRAIN INJURED		SOCIALLY & EMOTIONALLY DISTURBED		HEARING IMPAIRED		VISUALLY IMPAIRED		GIFTED & TALENTED		Speech Correction		Total	
			T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
IU 10	-	-	12	139	7	45	2	14	15	158	8	56	2	32	1	14	2	34	13	1061	62	1553
District	-	-	14	185	1	13	-	-	-	-	-	-	-	-	-	-	2	42	6	394	23	634
TOTAL	-	-	26	324	8	58	2	14	15	158	8	56	2	32	1	14	4	76	19	1455	85	2187
IU 11	-	-	-	-	7	78	-	-	1	6	-	-	-	-	-	-	-	-	11	936	19	1020
District	-	-	21	263	3	29	-	-	-	-	-	-	-	-	-	-	2	27	-	-	26	319
TOTAL	-	-	21	263	10	107	-	-	1	6	-	-	-	-	-	-	2	27	11	936	45	1339
IU 12	-	-	17	203	16	209	2	12	33	324	6	33	3	27	4	28	1	8	27	2984	109	3828
District	-	-	41	566	2	28	1	11	-	-	1	6	-	-	-	-	-	-	8	776	53	1387
TOTAL	-	-	58	769	18	237	3	23	33	324	7	39	3	27	4	28	1	8	35	3760	162	5215
IU 13	-	-	4	40	13	150	2	18	13	223	5	25	6	112	2	34	2	294	30	1994	77	2890
District	-	-	53	669	6	71	-	-	2	20	2	14	-	-	-	-	4	153	5	612	72	1539
TOTAL	-	-	57	709	19	221	2	18	15	243	7	39	6	112	2	34	6	447	35	2606	149	4429
IU 14	-	-	11	139	11	104	-	-	8	77	3	18	3	55	2	35	6	408	13	1091	57	1927
District	-	-	21	289	5	83	3	46	1	10	2	13	1	8	1	20	-	-	3	510	37	979
TOTAL	-	-	32	428	16	187	3	46	9	87	5	31	4	63	3	55	6	408	16	1601	94	2906
IU 15	1	10	2	26	17	177	7	64	45	485	14	88	6	37	4	50	-	-	36	2142	132	3079
District	-	-	59	788	2	49	1	12	5	39	2	16	-	-	-	-	2	17	3	345	74	1266
TOTAL	1	10	61	814	19	226	8	76	50	524	16	104	6	37	4	50	2	17	39	2487	206	4345
IU 16	-	-	9	118	14	126	1	6	13	130	-	-	3	38	2	36	4	89	20	1364	66	1907
District	-	-	23	284	1	10	-	-	-	-	-	-	-	-	-	-	1	27	2	377	27	698
TOTAL	-	-	32	402	15	136	1	6	13	130	-	-	3	38	2	36	5	116	22	1741	93	2605
IU 17	1	8	25	311	10	125	5	31	9	94	2	9	1	12	3	31	2	49	22	1650	80	2320
District	-	-	23	296	3	36	-	-	1	12	-	-	-	7	-	-	-	-	3	346	30	697
TOTAL	1	8	48	607	13	161	5	31	10	106	2	9	1	19	3	31	2	49	25	1996	110	3017
IU 18	1	12	18	179	20	172	4	43	5	32	2	18	1	17	1	19	1	50	17	1085	70	1627
District	-	-	24	310	6	102	2	21	4	36	-	-	-	-	1	11	15	259	2	143	54	882
TOTAL	1	12	42	489	26	274	6	64	9	68	2	18	1	17	2	30	16	309	19	1228	124	2509

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

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Elementary ☒
Secondary ☐
Other

T - Teachers/Classes
P - Pupils

	School District	Detention		MENTALLY RETARDED				PHYSICALLY HANDICAPPED		BRAIN INJURED		SOCIALLY & EMOTIONALLY DISTURBED		HEARING IMPAIRED		VISUALLY IMPAIRED		GIFTED & TALENTED		Speech Correction		Total	
				EDUCABLE		TRAINABLE																	
				T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
1	IU 19	-	-	33	349	28	279	4	32	5	43	5	28	5	32	4	78	27	498	27	1335	138	2674
2	District	-	-	16	246	4	32	1	15	4	40	-	-	2	19	1	8	-	-	5	349	33	709
3	TOTAL	-	-	49	595	32	311	5	47	9	83	5	28	7	51	5	86	27	498	32	1684	171	3383
4																							
5	IU 20	-	-	14	178	13	142	4	38	8	76	11	52	2	39	3	30	-	-	18	1134	73	1689
6	District	-	-	22	286	2	22	2	15	-	-	1	12	-	-	1	8	-	-	6	667	34	1010
7	TOTAL	-	-	36	464	15	164	6	53	8	76	12	64	2	39	4	38	-	-	24	1801	107	2699
8																							
9	IU 21	1	5	4	50	8	77	2	16	5	64	5	35	3	22	2	21	2	102	14	1172	46	1564
10	District	-	-	26	365	2	27	2	23	-	-	-	-	1	14	1	6	6	150	4	556	42	1141
11	TOTAL	1	5	30	415	10	104	4	39	5	64	5	35	4	36	3	27	8	252	18	1728	88	2705
12																							
13	IU 22	-	-	-	-	17	196	8	57	17	122	5	30	18	209	2	44	5	83	49	5046	121	5787
14	District	-	-	46	598	14	212	-	-	26	499	25	320	-	-	-	-	12	193	6	810	129	2632
15	TOTAL	-	-	46	598	31	408	8	57	43	621	30	350	18	209	2	44	17	276	55	5856	250	8419
16																							
17	IU 23	-	-	-	-	9	94	10	96	23	223	20	173	19	118	10	70	-	-	44	2756	135	3530
18	District	-	-	44	495	18	152	-	-	11	103	20	150	-	-	-	-	-	-	12	1267	105	2167
19	TOTAL	-	-	44	495	27	246	10	96	34	326	40	323	19	118	10	70	-	-	56	4023	240	5697
20																							
21	IU 24	2	12	-	-	16	220	3	33	24	282	8	64	1	5	2	15	-	-	25	2115	81	2746
22	District	-	-	26	291	-	-	-	-	-	-	2	20	-	-	-	-	-	-	-	-	28	311
23	TOTAL	2	12	26	291	16	220	3	33	24	282	10	84	1	5	2	15	-	-	25	2115	109	3057
24																							
25	IU 25	-	-	6	69	8	72	6	57	43	454	5	46	12	130	2	24	-	-	23	1747	105	2599
26	District	-	-	38	415	8	95	-	-	19	199	6	39	-	-	-	10	29	415	5	1284	105	2457
27	TOTAL	-	-	44	484	16	167	6	57	62	653	11	85	12	130	2	34	29	415	28	3031	210	5056
28																							
29	IU 26	11	359	204	2874	99	926	30	426	11	73	40	250	4	71	13	125	31	864	43	4164	486	10132
30																							
31	IU 27	-	-	19	204	11	164	3	30	3	29	3	22	5	54	1	18	-	-	20	2017	65	2538
32	District	-	-	2	23	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	23
33	TOTAL	-	-	21	227	11	164	3	30	3	29	3	22	5	54	1	18	-	-	20	2017	67	2561
34																							
35																							
36																							

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

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Elementary ☒
Secondary ☐
Other

T - Teachers/Classes
P - Pupils

	School District	Detention		MENTALLY RETARDED				PHYSICALLY HANDICAPPED		BRAIN INJURED		SOCIALLY & EMOTIONALLY DISTURBED		HEARING IMPAIRED		VISUALLY IMPAIRED		GIFTED & TALENTED		Speech Correction		Total	
				EDUCABLE		TRAINABLE																	
				T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
1	IU 28	-	-	-	-	8	102	-	-	1	7	2	10	2	18	2	52	3	164	17	1510	35	1863
2	District	-	-	49	619	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	196	51	815
3	TOTAL	-	-	49	619	8	102	-	-	1	7	2	10	2	18	2	52	3	164	19	1706	86	2678
4																							
5	IU 29	-	-	11	172	5	40	2	28	3	29	3	26	6	260	3	18	7	192	12	895	52	1660
6	District	-	-	6	74	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	74
7	TOTAL	-	-	17	246	5	40	2	28	3	29	3	26	6	260	3	18	7	192	12	895	58	1734
8																							
9																							
10																							
11																							
12	Intermediate Unit																						
13	Totals	17	406	685	8940	466	4905	142	1486	414	3896	220	1480	161	1729	100	1075	170	4086	763	62507	3138	90510
14																							
15	District Totals	-	-	788	10185	99	1213	21	222	85	1150	69	646	12	105	8	83	79	1560	175	13993	1336	29157
16																							
17	Grand Total	17	406	1473	19125	565	6118	163	1708	499	5046	289	2126	173	1834	108	1158	249	5646	938	76500	4474	119667
18																							
19																							
20																							
21																							
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33																							
34																							
35																							
36																							

Intermediate Unit/District Secondary Programs

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

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Elementary ☐
Secondary ☒
Other

T - Teachers/Classes
P - Pupils

School District	Detention		MENTALLY RETARDED				PHYSICALLY HANDICAPPED		BRAIN INJURED		SOCIALLY & EMOTIONALLY DISTURBED		HEARING IMPAIRED		VISUALLY IMPAIRED		GIFTED & TALENTED		Speech Correction		Total	
			EDUCABLE		TRAINABLE																	
			T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
IU 1	-	-	41	582	6	68	2	16	-	-	-	-	3	66	4	81	-	-	6	577	62	1390
District	-	-	52	1003	1	16	1	12	-	-	-	-	-	-	-	-	-	-	1	12	55	1043
TOTAL	-	-	93	1585	7	84	3	28	-	-	-	-	3	66	4	81	-	-	7	589	117	2433
IU 2	-	-	65	1625	11	198	4	48	8	54	16	144	5	45	5	60	82	1836	5	375	201	4385
District	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	-	-	65	1625	11	198	4	48	8	54	16	144	5	45	5	60	82	1836	5	375	201	4385
IU 3	-	-	69	984	20	211	9	75	-	-	17	81	-	-	-	-	-	-	7	461	122	1812
District	-	-	11	189	82	20	-	-	2	14	3	27	-	-	-	-	-	-	6	119	104	369
TOTAL	-	-	80	1173	102	231	9	75	2	14	20	108	-	-	-	-	-	-	13	580	226	2181
IU 4	1	47	15	256	5	59	2	19	-	-	1	4	-	-	1	18	-	-	2	181	27	584
District	-	-	35	683	-	-	1	11	-	-	4	33	1	12	-	-	1	15	4	131	46	885
TOTAL	1	47	50	939	5	59	3	30	-	-	5	37	1	12	1	18	1	15	6	312	73	1469
IU 5	-	-	13	214	7	77	-	-	1	9	5	32	-	-	-	-	2	36	3	240	31	608
District	-	-	45	803	4	41	4	64	-	-	4	31	2	17	-	-	8	109	4	275	71	1340
TOTAL	-	-	58	1017	11	118	4	64	1	9	9	63	2	17	-	-	10	145	7	515	102	1948
IU 6	-	-	3	43	1	10	-	-	-	-	-	-	-	-	-	8	-	-	-	126	4	187
District	-	-	31	575	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	31	581
TOTAL	-	-	34	618	1	10	-	-	-	-	-	-	-	-	-	8	-	-	-	132	35	768
IU 7	-	-	43	703	9	101	2	18	-	-	3	22	2	36	3	50	9	85	5	426	76	1441
District	-	-	12	210	-	-	-	-	-	-	-	-	-	-	-	-	1	65	2	177	15	452
TOTAL	-	-	55	913	9	101	2	18	-	-	3	22	2	36	3	50	10	150	7	603	91	1893
IU 8	2	416	41	643	9	98	1	13	2	21	-	-	-	-	1	15	2	59	1	74	59	1339
District	-	-	30	623	1	15	-	-	-	-	-	-	-	-	-	-	7	165	-	-	38	803
TOTAL	2	416	71	1266	10	113	1	13	2	21	-	-	-	-	1	15	9	224	1	74	97	2142
IU 9	-	-	16	247	4	32	-	-	-	-	-	-	-	6	-	-	-	-	-	65	20	350
District	-	-	6	86	1	11	-	-	-	-	-	-	-	-	-	-	-	-	-	19	7	116
TOTAL	-	-	22	333	5	43	-	-	-	-	-	-	-	6	-	-	-	-	-	84	27	466

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

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Elementary ☐
Secondary ☒
Other

T - Teachers/Classes
P - Pupils

School District	Detention		MENTALLY RETARDED				PHYSICALLY HANDICAPPED		BRAIN INJURED		SOCIALLY & EMOTIONALLY DISTURBED		HEARING IMPAIRED		VISUALLY IMPAIRED		GIFTED & TALENTED		Speech Correction		Total	
			EDUCABLE		TRAINABLE																	
			T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
IU 10	-	-	17	301	3	29	-	-	2	13	2	14	1	11	1	8	1	118	-	-	27	494
District	-	-	16	261	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	16	261
TOTAL	-	-	33	562	3	29	-	-	2	13	2	14	1	11	1	8	1	118	-	-	43	755
IU 11	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	53	-	53
District	-	-	24	483	1	16	-	-	-	-	-	-	-	-	-	-	7	74	-	-	32	573
TOTAL	-	-	24	483	1	16	-	-	-	-	-	-	-	-	-	-	7	74	-	53	32	626
IU 12	2	30	10	208	12	156	-	3	3	32	6	43	-	2	-	14	1	29	-	138	34	655
District	-	-	37	414	-	-	1	10	-	-	-	-	-	-	-	-	-	-	-	27	38	451
TOTAL	2	30	47	622	12	156	1	13	3	32	6	43	-	2	-	14	1	29	-	165	72	1106
IU 13	1	36	6	107	5	52	1	5	3	27	1	6	-	60	-	13	-	-	-	202	17	508
District	-	-	64	1078	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	64	1078
TOTAL	1	36	70	1185	5	52	1	5	3	27	1	6	-	60	-	13	-	-	-	202	81	1586
IU 14	1	9	14	219	3	35	-	-	1	12	6	42	-	27	-	-	-	-	-	58	25	402
District	-	-	27	384	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	27	384
TOTAL	1	9	41	603	3	35	-	-	1	12	6	42	-	27	-	-	-	-	-	58	52	786
IU 15	-	-	1	18	7	91	-	-	1	10	3	19	-	-	1	8	-	-	4	138	17	284
District	-	-	63	1085	2	27	-	-	-	-	2	13	-	-	-	-	3	20	-	28	70	1173
TOTAL	-	-	64	1103	9	118	-	-	1	10	5	32	-	-	1	8	3	20	4	166	87	1457
IU 16	-	-	10	180	2	27	-	-	1	7	1	6	-	-	-	-	4	61	-	-	18	281
District	-	-	27	436	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	27	436
TOTAL	-	-	37	616	2	27	-	-	1	7	1	6	-	-	-	-	4	61	-	-	45	717
IU 17	-	-	22	346	5	67	-	-	-	-	-	-	-	-	-	9	-	-	-	-	27	422
District	-	-	20	335	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	34	20	371
TOTAL	-	-	42	681	5	67	-	-	-	-	-	-	-	2	-	9	-	-	-	34	47	793
IU 18	-	174	11	206	5	83	1	12	1	7	2	18	-	-	-	-	-	75	-	106	20	681
District	-	-	19	336	1	10	-	-	-	-	-	-	-	-	1	7	6	84	1	19	28	456
TOTAL	-	174	30	542	6	93	1	12	1	7	2	18	-	-	1	7	6	159	1	125	48	1137

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

DEBE-383 (12/69) Page 1

Elementary ☐
Secondary ☒
Other

T - Teachers/Classes
P - Pupils

School District	Detention		MENTALLY RETARDED				PHYSICALLY HANDICAPPED		BRAIN INJURED		SOCIALLY & EMOTIONALLY DISTURBED		HEARING IMPAIRED		VISUALLY IMPAIRED		GIFTED & TALENTED		Speech Correction		Total	
			EDUCABLE		TRAINABLE																	
			T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
IU 19	-	-	29	376	4	52	1	7	-	-	4	49	-	19	-	10	2	50	-	56	40	619
District	-	-	12	299	1	10	-	-	-	-	-	-	-	-	1	12	24	329	1	9	39	659
TOTAL	-	-	41	675	5	62	1	7	-	-	4	49	-	19	1	22	26	579	1	65	79	1278
IU 20	2	300	22	288	5	58	1	10	-	-	1	12	-	13	-	18	-	-	-	50	31	749
District	-	-	30	488	1	8	1	11	-	-	-	-	-	-	-	-	-	-	-	-	32	507
TOTAL	2	300	52	776	6	66	2	21	-	-	1	12	-	13	-	18	-	-	-	50	63	1256
IU 21	-	-	10	126	3	27	1	9	-	-	3	25	-	6	-	9	-	-	-	77	17	279
District	-	-	27	415	1	18	-	-	-	-	1	16	-	3	-	6	104	887	-	21	133	1366
TOTAL	-	-	37	541	4	45	1	9	-	-	4	41	-	9	-	15	104	887	-	98	150	1645
IU 22	3	30	-	-	3	34	1	8	-	-	-	-	6	91	2	33	4	87	4	484	23	767
District	-	-	54	843	4	42	-	-	6	116	8	112	-	-	-	-	-	-	1	135	73	1248
TOTAL	3	30	54	843	7	76	1	8	6	116	8	112	6	91	2	33	4	87	5	619	96	2015
IU 23	3	23	-	-	4	43	-	-	3	40	8	78	-	48	1	67	3	90	-	337	22	726
District	-	-	55	813	6	82	-	-	2	32	4	38	-	-	-	-	-	-	-	136	67	1101
TOTAL	3	23	55	813	10	125	-	-	5	72	12	116	-	48	1	67	3	90	-	473	89	1827
IU 24	2	12	-	-	8	85	1	12	4	55	5	48	-	-	-	-	-	-	-	-	20	212
District	-	-	39	509	-	-	-	-	-	-	-	-	-	-	-	-	2	76	-	-	41	585
TOTAL	2	12	39	509	8	85	1	12	4	55	5	48	-	-	-	-	2	76	-	-	61	797
IU 25	2	30	1	10	7	71	2	24	3	57	12	84	2	20	3	60	-	-	2	165	34	521
District	-	-	49	746	5	57	-	-	1	10	7	78	-	1	-	5	12	380	1	100	75	1377
TOTAL	2	30	50	756	12	128	2	24	4	67	19	162	2	21	3	65	12	380	3	265	99	1898
IU 26	57	1140	363	6241	22	278	7	76	-	-	10	71	1	19	10	42	57	1608	10	900	557	10375
District	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	57	1140	363	6241	22	278	7	76	-	-	10	71	1	19	10	42	57	1608	10	900	557	10375
IU 27	2	325	16	237	4	53	-	-	-	-	-	-	-	8	-	14	-	-	-	82	22	719
District	-	-	6	109	-	-	-	-	-	-	-	-	-	-	-	-	6	38	-	-	12	147
TOTAL	2	325	22	346	4	53	-	-	-	-	-	-	-	8	-	14	6	38	-	82	34	866

Commonwealth of Pennsylvania - Department of Education

SPECIAL EDUCATION PROGRAMS/SERVICES

DEBE-383 (12/69) Page 1

Elementary ☐
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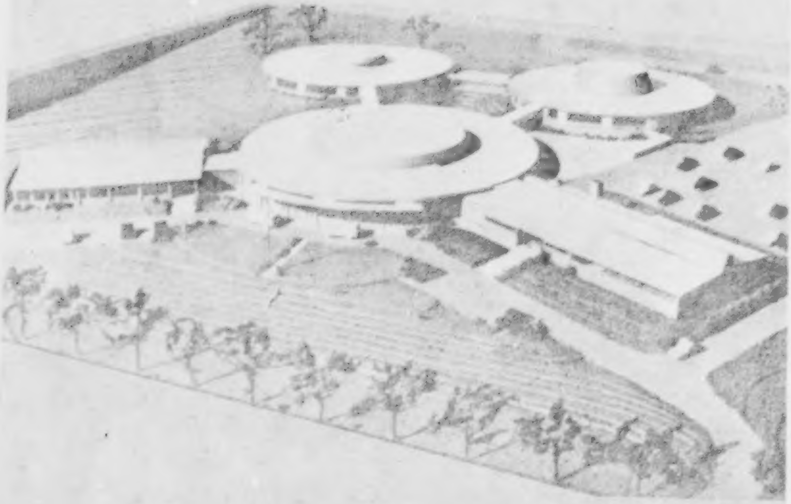
			EDUCABLE		TRAINABLE																	
			T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P
IU 28	-	-	1	10	3	40	-	-	-	-	-	-	-	13	-	20	-	-	-	153	4	236
District	-	-	50	992	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	50	992
TOTAL	-	-	51	1002	3	40	-	-	-	-	-	-	-	13	-	20	-	-	-	153	54	1228
IU 29	1	6	10	141	2	30	1	14	-	-	1	8	-	106	-	12	-	-	-	24	15	341
District	-	-	2	34	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	34
TOTAL	1	6	12	175	2	30	1	14	-	-	1	8	-	106	-	12	-	-	-	24	17	375
Intermediate Unit Totals	79	2578	849	14311	179	2165	37	369	33	344	107	806	20	596	32	569	167	4134	49	5548	1552	31420
District Totals	-	-	843	14232	111	373	8	108	11	172	33	348	3	35	2	30	181	2242	21	1248	1213	18788
Grand Total	79	2578	1692	28543	290	2538	45	477	44	516	140	1154	23	631	34	599	348	6376	70	6796	2765	50208

EVERETT A. McDONALD, Jr.
COMPREHENSIVE
ELEMENTARY SCHOOL

CENTENNIAL SCHOOLS



WARMINSTER — BUCKS COUNTY — PENNSYLVANIA

DEDICATED APRIL 26, 1968

EVERETT A. McDONALD, JR.

In 1954, the school directors of Ivyland Borough and Southampton and Warminster Townships agreed to coordinate their educational programs through the establishment of a joint school board. The component boards of the three participating districts then matched the foresight of their first decision with a second one when they invited Dr. Everett A. McDonald, Jr., at that time the young superintendent of the Westbury, L.I. schools, to serve as chief administrator of the new jointure. It would have been difficult to find an abler man or one better qualified for the position by virtue of his preparation and experience.

Born in Leominster, Mass. in 1914, Everett A. McDonald, Jr. graduated from high school in the depths of the Depression. He worked for the next two years to earn his college tuition and entered Fitchburg State Teachers College in 1934. While at Fitchburg, he divided his time between his academic studies and the jobs he held to support himself, working a four-hour night shift in a plastic factory and in a butcher shop on weekends. Upon his graduation in 1938, he accepted a position as a junior high school science teacher and coach. The following year, while continuing to teach, he received his first administrative appointment and rapidly assumed more extensive responsibilities.

From 1939 to 1940, Dr. McDonald was teaching principal and coach; from 1940 to 1942, he was a high school teacher and assistant principal in grades 7 to 12, in Sandwich, Mass.

In 1942 Dr. McDonald resigned as Principal-Superintendent of the Provincetown, Mass. Schools to enter the U.S. Air Force where he served as a training officer. During his two-and-a-half years of military service, he was able to continue his professional preparation, studying mathematics and engineering at the University of Michigan, and completing the requirements for the Master of Education degree at Boston University.

Dr. McDonald returned to civilian life in 1945 as principal of the secondary school in East Hampton, Conn. In 1947, he was appointed Superintendent of the District, a position he held for the next four years. While serving in this capacity full time, he was also attending Yale University, and received in 1951 the Master of Arts degree, a pre-requisite for entrance to the University's doctoral program.

In this same year, he accepted the position of Superintendent of Schools in Westbury, L.I., a district which was experiencing the kind of phenomenal growth this area was to know soon thereafter. During the three-year period from 1951 to 1954, Dr. McDonald supervised an intensive building program, developed a total revision of the school system, and completed his doctoral program at Yale. In the critical year of 1954 he received both his Ph.D. degree and a call to serve as chief administrator of the newly-formed Centennial Joint School District in Bucks County, Pa.

The burgeoning suburban and industrial development which characterizes the Centennial District today was in its initial stages in 1954. The area at that time was still lightly populated and essentially rural in nature. When Dr. McDonald assumed his duties here only 1700 students were enrolled in the five schools of the jointure.

The modest dimensions of the job were not to remain undisturbed for long. From 1950 to 1960, the population of the District increased from 9,100 persons to almost 40,000, marking the area as one of the fastest growing communities in the country. School enrollments, reflecting this surge, had ballooned from 1,700 students to 12,000 by the beginning of the 1968-69 school term — and current projections suggest that the "peaking of growth" is still nowhere in sight.

Under Dr. McDonald's guidance, the school district has planned for and kept pace with this astonishing increase, without the [illegible] imposed [illegible] by the plant. To meet Centennial's continually expanding needs, he has supervised the planning, development and construction of seven elementary schools, ten elementary school additions, four secondary schools, four secondary school additions and a new Area Vocational Technical School whose facilities will be shared by Centennial and other cooperating school districts. Among this roster of construction projects is, of course, the school we are dedicating today, a building of such exemplary design that it has received substantial Federal support and national recognition.

This enormous expansion of Centennial's physical plant represents only a fraction of the manifold responsibilities which Dr. McDonald has discharged so well. Among his many other areas of concern have been the recruitment of a sound supporting staff to implement the District's programs, and the carefully-conceived development of a system which truly meets the aspirations of the community and is consonant with its resources. It is a mark of his leadership that the educational goals of the community have been continually enlarged and that it has given strong support to the institution of such new services as elementary guidance and library programs and shared-time computer related instruction.

Central to Dr. McDonald's educational philosophy — and, consequently, to the direction he has given the Centennial Schools — is his overriding concern that every child receive the best education possible. Towards that end he has initiated multiple-track secondary course offerings, an accelerated program for academically gifted children, and an exemplary pre-school program which has served as a model for Head Start projects throughout the country. The remarkable facilities in this new building for handicapped children reflect his conviction that local schools have an obligation to serve all of their children — not just those who are "convenient" to educate. As the tangible embodiment of Dr. McDonald's educational principles, it seems particularly fitting that this school should bear his name.

Dr. McDonald's strong support for constructive innovation has led to an on-going momentum in the District to improve its programs, services and facilities. His concern for the advancement of education has not been limited to Centennial, however. The [illegible] Movement which he helped to establish is designed to coordinate educational research and stimulate its practical applications throughout the country. His contributions to his profession have been widely recognized. He has been listed in "Who's Who in American Education" since 1951 and "Who's Who in the East," and has served this state in an advisory capacity for a number of years.

No sharp line divides Dr. McDonald's professional life from his personal one, and his service to the community extends far beyond the long hours of his working day. His participation in community affairs has yielded significant results: he is a co-founder and charter member of the Big Brothers of Bucks County, the Bucks County Basic Education Program and the Economic Opportunity Council which he served as Director and Treasurer. He is also a charter member and Past President of the Warminster Rotary Club.

Dr. McDonald is married and lives in Southampton with his wife, Muriel, and Richard, the youngest of his three children. Janice is an elementary teacher in Long Island, and Bob is Field Engineer for Electric Producing Companies in Dallas, Texas. Dr. McDonald is a grandfather to Bob's two sons, Bobby and Chris. It would be remiss to close without thanking Muriel McDonald for the generosity and understanding with which she has shared her husband's time and her own to further the welfare of this community.

A debt of gratitude is owed as well to the school directors of Ivyland Borough and Warminster and Southampton Townships who, in 1954, invited Dr. McDonald to serve as Superintendent of Schools. The wisdom of their choice has been confirmed many times over. It is improbable, however, that they could have guessed the eventual dimensions of the job, or the full measure of dedication and ability that their candidate would bring to it.

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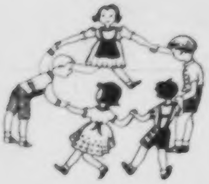
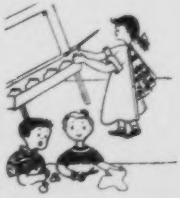
EVERETT A. McDONALD, JR.

PHILOSOPHY



It is the philosophy of the Centennial Schools to educate each child of the school district to his maximum potential. The implementation of this philosophy has led to the planning and development of the Everett A. McDonald, Jr. Elementary School. Educational programs are provided for children of regular, accelerated, educable, physically handicapped, trainable and learning disabilities classes.

Because of our uniqueness, we believe it desirable that all children should be provided the opportunity to participate actively with one another in planned educational activities; thus children of varying abilities and potential will learn about individual differences. Acceptance and awareness of talents, handicaps and limitations will ensue, building a sound foundation to the understanding of our human condition. Fostering a spirit of appreciation of others is our goal.



Therefore, through planned classroom activities and in the utilization of the special features in the buildings such as the homemaking center, swimming pool, industrial arts room, the library, gymnasium, cafetorium, and special experience room, the interaction between and among the children offers each child the opportunity to become acquainted with and appreciate the individual differences of his peers. Through this philosophy we hope that we have contributed to making each individual child's school experience more rewarding.

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REGULAR CLASS PROGRAM

The regular classes of kindergarten through sixth grades are made up of children who live within the boundary lines established for the McDonald School. The children are grouped into classes on the basis of age and academic ability. The children experience the curriculum provided by the district for pupils of the elementary grades. The rate of progress of each child is determined by his ability and his mastery of the skills and concepts of the various disciplines.

MATHEMATICS

[illegible]

SOCIAL STUDIES

[illegible]

READING

[illegible]

ART

[illegible]

ACCELERATED PROGRAM

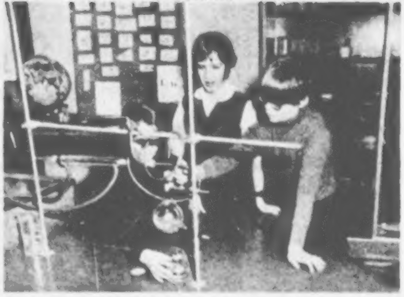
It is the philosophy of the accelerated program to offer the mentally gifted child an opportunity to operate at an accelerated rate; in addition, there is a provision for enrichment experiences that challenge and motivate the student to pursue individual interests and goals.

The children are selected for the program on the basis of mental maturity, academic achievement, and the recommendation of teachers and principals. Placement of students occurs either at the fourth or sixth grade level.

HEALTH

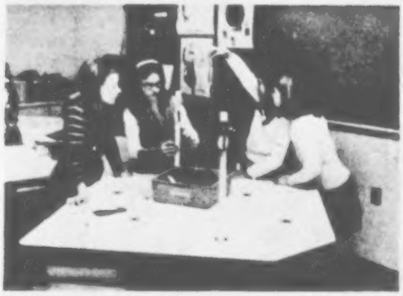
The torso model provides the student with an opportunity to [illegible] the parts of the body [illegible] being studied.

SCIENCE



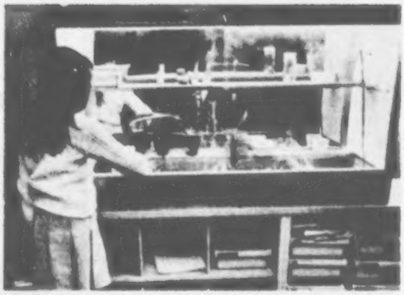
The science room is designed and equipped with the junior high science program in mind. Experimentation is an essential aspect of the science program.

MATHEMATICS



The [illegible] tables are specially designed to permit students to manipulate various mathematics and science concepts through the use of concrete materials as portrayed in this picture.

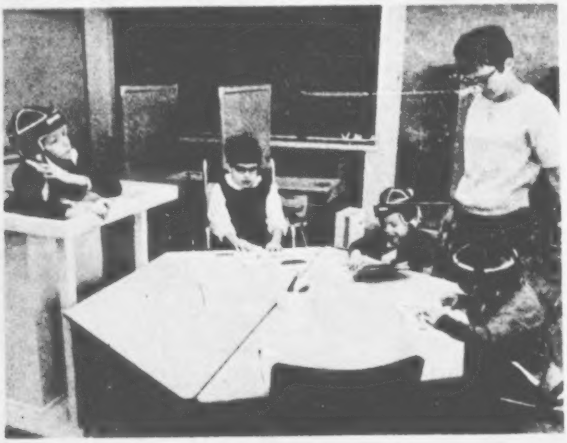
SCIENCE



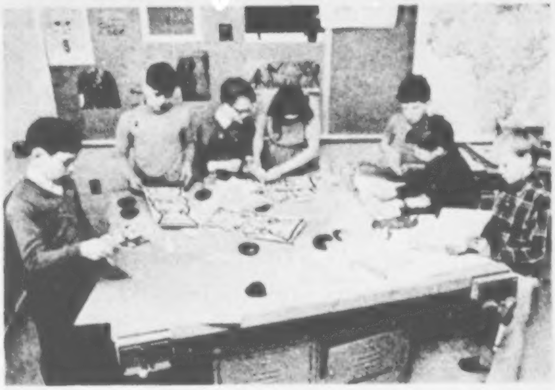
The Climatarium enables the children to plan science experiments that require various climatic changes. Various climatic conditions are simulated with a turn of a dial.

PHYSICALLY HANDICAPPED PROGRAM

The philosophy of the physically handicapped class is to attempt to bring each child develop his physical, mental and social potentials so that he may become an emotionally mature, integrated person and contributing citizen. This is accomplished in an atmosphere of individual instruction and small group work. Independence and self reliance are major goals of program. Education of the mind as well as the body is part of the program to help each child function at grade level with the hope that eventually he may be integrated into a regular school program.



EDUCABLE PROGRAM



EDUCABLE CLASSES

The curriculum for the educable children is designed to meet the needs of the individual child and the group of which he is a member. A basic program of reading, mathematics, social studies, spelling, science, health and safety is [illegible] as the basic program. Arts and crafts experiences provide the children with opportunities to explore the basic [illegible] creative arts. The industrial arts (shop) has proved to be an exciting addition to the program in that it has provided the children with the opportunity to work with tools and various media in developing their class projects.

TRAINABLE

The purpose of the education of the trainable mentally retarded children is similar to that for all children and youth in that it provides, through appropriate programs, the opportunity for the trainable children to become well-adjusted, contributing members of society. The content of special class programs is so planned that these children have sufficient opportunities for meaningful experiences related to living at home, at school, and in the community.

The trainable classrooms are equipped with a homemaking center which provides a thoroughly equipped kitchen, living room, sewing room, bedroom, and bathroom facilities, all of which help provide the children with the learning experiences they will need in fulfilling their daily needs.

LEARNING DISABILITIES PROGRAM

Placement in a class for children with learning disabilities is made when the organic-neurological limitations of a child so interferes with his functioning in a regular class program that special techniques and supportive services are deemed necessary.

The classes housed in the McDonald School emphasize a schedule based on many short work periods. Through the use of study cubicles the child's environment is confined, focusing his attention on immediate tasks. The program includes training in language experiences and intensive work in visual and auditory perception. Extensive psychological testing and services determine each child's specific learning work patterns and curriculum needs.

SPECIAL

ART PROGRAM

The art program attempts to give children the kinds of activities which will enrich their knowledge, understanding and enjoyment. These activities allow the children to express themselves freely and creatively in a variety of media. The art projects and experiences are consistent with children's abilities and interests and are geared to their physical, mental and emotional characteristics. The program provides opportunities for innovation and creativity.

MUSIC

The vocal music program provides pleasurable musical experiences designed to create musical awareness, initiative, discrimination, insight and skill. A broad musical foundation thus is experienced through the ear, the eye, the voice and the body, guiding children in rich, varied and appealing experiences with music, employing singing, dancing, listening, and creative activities.

Student lives are enriched musically in the following ways: guidance for better understanding and appreciation of music, development of techniques and necessary fundamentals which tend to enhance the social aspects of life, growth of wholesome ideals of conduct through both individual and group participation, and a contribution to recreation and the fun of living.

LIBRARY

The purpose of a school library is to enrich the school's educational program through the provision of curriculum-related materials which directly support the courses of study, and other materials which serve to quicken the child's imagination, enlarge his understanding and stimulate his interest in the pursuit of new skills and ideas.

The essential function of the library is to establish in children a positive, lifelong response to that exploration of their inward and outward worlds made possible by good books, records and other media through which men communicate.

SUSAN CARRON
Art Teacher

NANCY JOY KOCH
Vocal Music Teacher

ELLEN WILKINSON
Librarian

SERVICES

The circular library has been designed with study carrels, reference rooms, reading rooms and a story telling area.

THE SCHOOL HEALTH PROGRAM

The school health program is planned to assist the children in acquiring knowledge and attitudes that contribute to healthful living. It provides services to meet the needs of children resulting from accidents, disease, and congenital defects.

The school nurse is one member of a team of specialists whose duties are to carry out the health program. Some of her duties include the scheduling of regular medical and dental examinations, arranging for special tests and immunization programs, maintaining comprehensive health records for each child, rendering advisory assistance to pupils, parents and teachers, and conducting an adequate program of first aid and accident prevention.

INSTRUMENTAL MUSIC PROGRAM

Children interested in pursuing their musical talents are encouraged to begin instrumental lessons at the fourth grade level. Participation in the band and orchestra offers the children the necessary incentive to further their musical ambitions through a rewarding group experience.

ADAPTED PHYSICAL EDUCATION

The purpose of adapted physical education is to help the child develop to the full extent of his physical capacities. Adapted physical education should provide for a correction of remedial defects and an improvement of postural mechanics. This is accomplished through the use of therapeutic exercise designed to improve strength, muscular relaxation, and flexibility. Adapted physical education should also permit each child to attain an understanding of his physical potentialities, an awareness of his limitations and an acceptance of the need to live with them.

MARGARET NOLAN
School Nurse

LILLIAN RANGS
Adaptive Physical
Education

DAVID VONEIDA
Adaptive Physical
Education

INSTRUCTIONAL

The technological developments of today's world are all part of learning. The children readily accept the new media with excitement and purpose.

Learning is an individual activity that may require many or different forms of communication other than the more common forms of conversation and print. Through the various media of projectors, films, film-strips, slides, earphones, tape recorders, cassette ta-

8mm Projector

Microscope

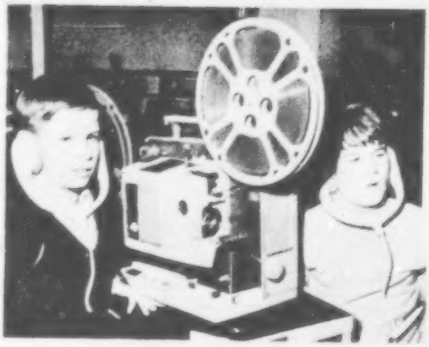
Combination Record-Slide Projector

Tape Recorder with Headsets

MEDIA

[illegible]

[illegible]



16mm Projector

Photography Club

Overhead Projector

Filmstrip Projector

DISTRICT

SWIMMING PROGRAM

One of the most unique features of the McDonald School is the swimming pool. The pool is 50' x 50' and progresses from a depth of 2' to 5'.

Children of the first grade throughout the Centennial School District participate in the instructional swimming program.

Children of the physically handicapped, trainable, learning disabilities and educable classes also utilize the swimming pool under the guidance of qualified swimming instructors.

The basic philosophy of the program is that every child should be taught how to swim and to be made aware of proper water safety.

INDUSTRIAL ARTS

The industrial arts center is initially an experience in the tangible and the functional, but in addition extends the promise of broadening horizons to include rich experiences in abstract or representational art forms. As problems and projects are designed by classes of inquiring students and teachers, the industrial arts center becomes the laboratory for personalized experiences in both the arts and sciences.

JOAN JONES
Swimming Instructor

ROBERTA DEVRIES
Swimming Instructor

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FACILITIES

[illegible]

INSTRUCTIONAL MATERIALS CENTER

[illegible]

[illegible]

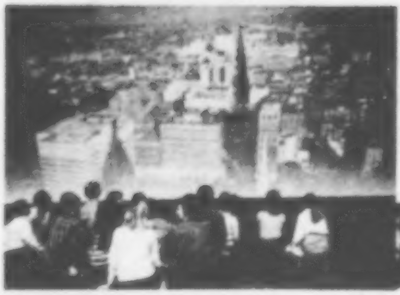
[illegible]

[illegible]

[illegible]

SPECIAL EXPERIENCE ROOM and PLANETARIUM

[illegible]



[illegible]

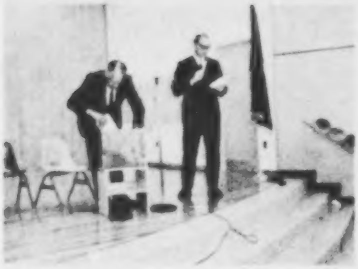
[illegible]

GYMNASIUM-CAFETORIUM

The gymnasium-cafetorium is designed to be flexible and adaptable for many different activities. The gymnasium, in addition to being fully equipped for a physical education program, will have as part of it a corrective gym to help meet the needs of children with physical deficiencies. The stage has been structured to permit traditional programs or programs in the round. The cafetorium is aesthetically designed to seat 300 children.

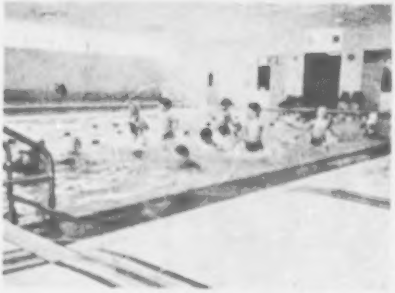
MAMMOTH TOYLAND
OTH TOYLAN

CORNERSTONE CEREMONY
ASSEMBLY PROGRAM



PLAYGROUND CAPERS

CANDID SHOTS



[illegible]

[illegible]

[illegible]

[illegible]

They are reading!

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[illegible] Principal

[illegible] Assistant Principal

ADMINISTRATION

It is the function of the administration to supervise the educational program in the school and to provide the proper atmosphere for learning.

[illegible]

[illegible]

[illegible]

GUIDANCE SERVICES

Through the team approach the Psychologist, Guidance Counselor, Nurse & School Social [illegible], Teacher and Principal plan a program for the individual child who is in need of special services through the guidance department.

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THE

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FACULTY

Patricia Cohn

Joann Conden

Priscilla Cushing

Diane Delver

Jean Farr

Martha Flaherty

Curtis Keller

Rita Kipp

Richard Kratz

Nancy Kratz

Florence Kuhns

Gail Lang

Marilyn Owens

William Rabbitman

Gloria Sava

Paul Schwing

Diane Sheridan

Grace Singer

[illegible]

Rose Marie Strauss

Eleanor Leach

Violet Mann

[illegible] Sobotka

Barbara Ulrich

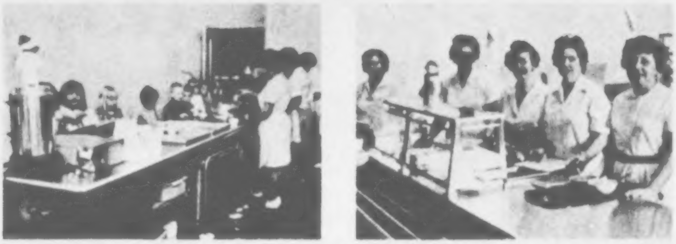
SECRETARIAL STAFF

Edna Playford

Anne Mackey

In addition to the secretaries' many administrative responsibilities of operating an efficient office, the secretaries' key role is one of public relations in working with parents, teachers and children.

CAFETERIA

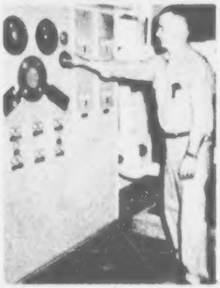


Left to right: Helen Mapes, Isabel Dunson, May Frankenberger, Bertha Koelzer, Rose Shuler

The cafeteria staff has the responsibility of providing the children with a Type A lunch that meets all the requirements for a well-balanced meal. The lunch period is an integral part of the children's educational program.

CUSTODIAL STAFF

Left to right: John Fearnow, Harold Jones, Mary Kendrick, Ann Mitchell, Walter Dahl and Kenneth Mapes



John Fearnow, Head Custodian

The custodial staff has the major responsibility of providing for the physical comfort of the children and staff in the school.

CENTRAL OFFICE ADMINISTRATORS

[illegible]
Assistant Superintendent for Elementary Education

ROBERT A. [illegible]
Assistant Business Manager

JOSEPH A. [illegible]
[illegible]

The Central Office Administrators have the responsibility of directing and coordinating the educational program, business affairs, transportation, and school plant facilities in the Centennial School District.

VINCENT [illegible]
Superintendent of Building and Grounds

W. DONALD [illegible]
[illegible]
and High Services

[illegible] W. [illegible]
Director of Teaching and
Learning Resources

SCHOOL BOARD

FRED J. [illegible]

WILLIAM G. MARTIN

J. SIDNEY [illegible]

THOMAS W. [illegible]

[illegible] M. [illegible]

MARIE A. [illegible]

FRED L. WRIGHT

JOHN P. [illegible]

EDWARD [illegible]

CLINT LAWSON

JOHN MACKAY

The public school systems of the Commonwealth are administered by a board of elected or appointed school directors who have been charged with the responsibilities of establishing school policies, procedures and the interpretation of legislation pertaining to school affairs.

AUTHORITY

The Centennial School Authority is created by the Centennial School Board for the purpose of constructing, improving, maintaining, operating, furnishing, and equipping the public schools.

MARTIN C. [illegible]

CHARLES R. [illegible]

EARLE E. [illegible]

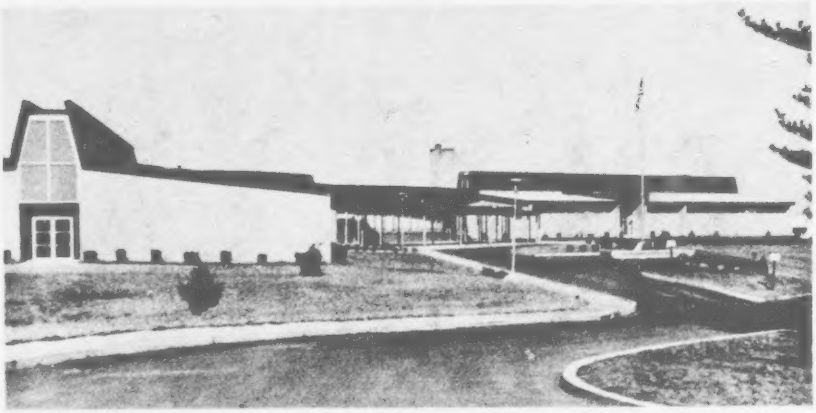
ROLAND H. BATES

GEORGE KAUN

WILLIAM [illegible]

COST STATISTICS

Site and Site Surveys	$ 105,575.00	Library	8,450.00
General Construction	1,815,300.00	Kitchen	33,000.00
Electrical	276,172.00	Movable Fixtures & Furniture	210,000.00
Plumbing	127,678.00	Architect	178,750.00
Heating	405,457.00	Legal & Printing	12,150.00
Paving	44,000.00	Bond Discount	74,000.00
Landscaping, Seeding and Sodding	25,000.00		
Fixed Equipment	42,963.00	TOTAL	$3,358,495.00



DESCRIPTION OF BUILDING

The Everett A. McDonald, Jr. Comprehensive Elementary School is located on a thirty acre site on Street Road at Reeves Lane in Warminster Township. The forty classroom building consists of three circular buildings with two rectangular wings.

Three kindergarten classrooms, the general office, the offices of the principal and the assistant principal, three conference rooms, the health suite, and two instrumental music practice rooms are located in one wing. The other wing houses the swimming pool, boiler room, receiving room, the custodian's office, service staff facilities, and storage.

A fully equipped gymnasium which can also serve as an auditorium is the central portion of one circular building. The cafeteria is separated from the gymnasium by the stage — a feature that makes it possible to do theatre in the round productions. The kitchen, an art room, two classrooms with adjacent areas having special features for the physically handicapped, three classrooms with a home-living center for the retarded—trainable, four classrooms featuring private conference rooms for the retarded — educable, a music room, and several large storage rooms complete the first circular building.

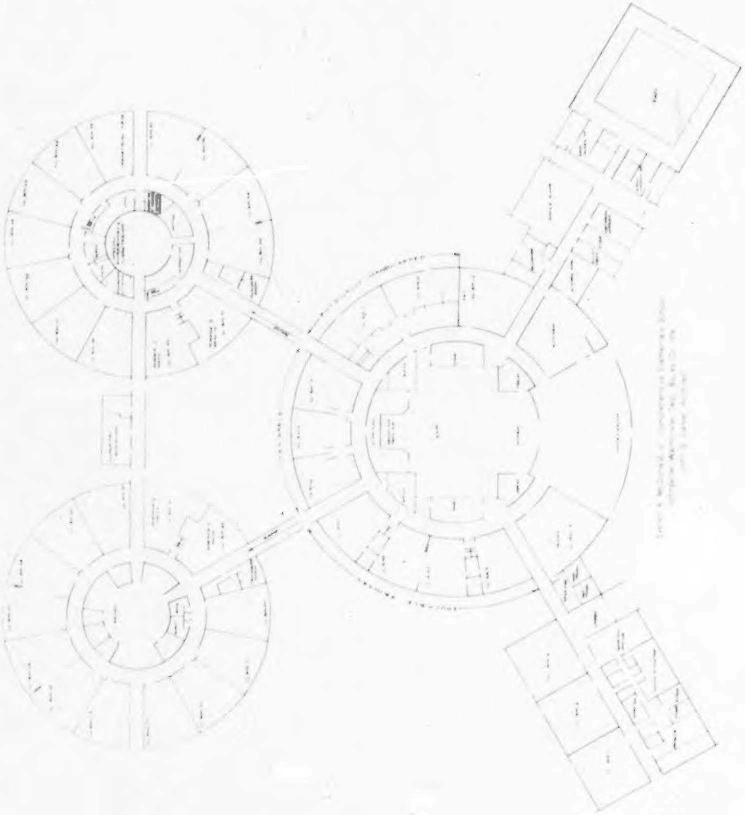
The second circular building contains the library, eleven regular classrooms, two specially furnished math-science classrooms, and a faculty room. The office of the Assistant Superintendent for Elementary Education is located off the hall connecting this building to the third circular building.

The central feature of the third circular building is the planetarium which has been equipped to provide children with sensory experiences beyond the scope of the conventional planetarium. The building contains two classrooms furnished specially for children with learning disabilities, three for children who are identified as retarded—educable, and two for math-science. It also contains five regular classrooms, the industrial arts center, the instructional materials center, a faculty room, and the offices and work areas of the Director of Teaching and Learning Resources and his staff.

The exterior walls are of buff and green face brick. Most interior walls are painted concrete block with wood panels appearing in some areas. Glazed brick and ceramic tile are found on some interior wall surfaces such as corridors, lavatories, and swimming pool area. The floors in most room areas are covered with asphalt tile. Terrazzo was used on the corridor, lobby, and cafeteria floors, while tile was used to cover the floors in the pool and kitchen areas. Several offices, the library, and the planetarium are carpeted. Most ceilings are covered with acoustical tile, although an acoustical plaster is to be found on some ceilings. Windows are covered with venetian blinds in most classrooms and fiber glass drapes in the offices, cafeteria, and kindergarten classrooms.

Each classroom is equipped with a storage cabinet featuring a formica covered work surface, a sink, running water, and a drinking fountain. Additional storage facilities found in each room are cabinets and shelves under the windows, two closets, a built-in file cabinet, and a wardrobe closet. A lavatory, chalkboards, corkboards, and pegboards are found in each classroom while most classrooms are also equipped to receive UHF, VHF, and closed-circuit television. Some classrooms have a folding door partition between them.

The building has public water, township sewer service, oil heat, adequate parking facilities, and playground equipment installed on playfields and blacktop play areas.



CORNERSTONE CEREMONY

OPENING PRAYER .... Joseph Rheaume
FLAG SALUTE .... Wayne Wurst
SONG — STAR SPANGLED BANNER
PRESENTATION OF McDONALD PORTRAIT .... Mr. Dietz
GUEST SPEAKER .... Dr. McDonald
SONG — GOD BLESS AMERICA
EXPLANATION OF CORNERSTONE CEREMONY .... Cindy Kinky
PRESENTATIONS FOR THE CORNERSTONE BY EACH CLASS —

MRS. JONES — Kindergarten
Individual Pictures

MRS. GLEITER — Kindergarten
Class Picture

MRS. GUTOSKY — Kindergarten
Paper Puzzle

MRS. AMPOLLINI — Grade 1
Individual Pictures

MRS. SAFRA — Grade 1
Booklet of names, pictures, birth dates

MRS. WARREN — Grade 2
Booklet — Best inventions as of 1968

MRS. FURLONG — Grade 2
Inventions of the Future

MRS. ALLEN — Grade 3
American Flag made by children

MISS CLINK — Grade 3
1968 Penny

MRS. MILLER — Grade 4
Class List, Fossil, 1968 Penny

MRS. GRUNDY — Grade 4
Current Events Booklet

MRS. DOOLING — Grade 4
Social Studies Booklet

MRS. BERRYMAN — Grade 4
Resume of a typical day at McDonald

MR. ZBINDEN — Grade 4
Booklet of the Cenozoic Era

MRS. KUNKLE — Grade 5
Written record of moving day

MRS. LANG — Grade 5
Class Newspaper

MR. MONTANYE — Grade 5
First impression of McDonald School

MRS. GRZYWACZ — Grade 5
Tape interview with Dr. McDonald

MRS. SINGER —
TMR Performance Profile
Group Picture

MRS. FLAHERTY —
TMR Performance Profile
Group Picture

MRS. KIPP — Educable
Children's Handwriting

MISS SHERIDAN — Educable
Class List

MRS. FITZGERALD — Educable
Handprint of each child

MR. HABBERMAN — Educable
Story

MRS. TOMPKINS — Educable
Booklet of Pictures

MR. KELLER — Educable
Children's written impressions

MR. GEUTHER — Educable
Booklet of Art

MISS GILLENTINE —
Learning Disabilities
Small Toy

MRS. CUSHING —
Learning Disabilities
Class Picture

MRS. COOPER — Phys. Handicap
Class Picture

DR. McDONALD —
Superintendent of Centennial Schools
Two Dollar Bill, Kennedy Half Dollar
Philosophy of the McDonald School

MRS. MARIE KOLBE —
Vice President of Centennial School Bd.
Minutes Concerning the Motion to Name the W-7 Project

MR. MARTIN BRUCKER —
Chairman Warminster Authority
Symbolic Memento of Bucks County

MRS. ALTA LEARY —
Elementary Supervisor
Centennial School Directory

MR. CHARLES WALKER —
Assistant Elementary Supervisor
Progress Reports of the McDonald School

MR. DONALD VAUGHAN —
Director of Learning and Pupil Service
Statements of Pupil Service Personnel
Picture of Craven Hall
Cornerstone Ceremony Program

MR. JOSEPH ALBANO —
Business Administrator
Cost Analysis of Building—40B—School Revenue Bonds

DR. HENRY RAY —
Director Teaching & Learning Resources
What Schools Will be Like in 100 Years

MR. JOSEPH KIPP—Assistant Principal
Klinger 6th Grade Newspaper

MRS. JONES — Teacher
Picture of Staff

MRS. NOLAN — Nurse
Registration Card

MRS. MAPES — Cafeteria Manager
Menu with Cafeteria Staff signatures

MRS. PLAYFORD — Secretary
Telephone

MR. FESMIRE — Custodian
Centennial Custodial Membership Card

MR. CARVER — Architect
Blue Print Drawings

WALLACE ENGINEERING — Contractor
Copy of Building Specifications
Letter Expressing Appreciation in Being Awarded the Contract

MR. JOHN A. DIETZ — Principal
Letter of Appointment as Principal

SONG — America the Beautiful

PLACING OF CORNERSTONE

Photography by
JIM BALDWIN

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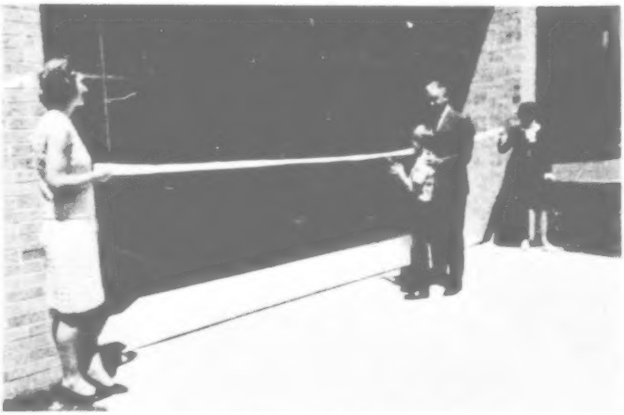
CORNERSTONE CEREMONY

The Cornerstone Ceremony was conducted on June 6, 1968. The program on the opposite page describes the various items that were placed into the cornerstone box at this memorable occasion.



RIBBON CUTTING CEREMONY

Dr. Everett A. McDonald, Jr. and his son, Richard, share the honor of cutting the white ribbon to signify the opening of the Everett A. McDonald, Jr. Comprehensive Elementary School on Thursday, May 9, 1968. Mrs. [illegible] McDonald and Mrs. Mary [illegible] and approximately 600 children [illegible] to enter the newly [illegible] school.

PROGRAM

Presiding, Mrs. Marie A. Kolbe
President, Centennial School Board

PRELUDE SELECTIONS	Everett A. McDonald, Jr. Comprehensive Elementary School Orchestra Mr. Bartholomew Anello, Conducting
INVOCATION	Rev. Patrick J. McLaughlin Saint John Bosco Church
PRESENTATION OF COLORS	Boy Scouts of America Troop 96, Warminster
PLEDGE OF ALLEGIANCE	Boy Scouts
NATIONAL ANTHEM	Audience, Chorus Miss Nancy Joy Koch, Conducting
RECOGNITIONS	Mrs. Marie A. Kolbe
PRESENTATION OF KEY	Mr. John S. Carver Architect
ACCEPTANCE OF KEY	Mr. Martin C. Brucker Chairman, Warminster Authority
PRESENTATION OF BUILDING AND KEY	Mr. Martin C. Brucker
ACCEPTANCE OF BUILDING AND KEY	Mr. John A. Dietz Principal, Everett A. McDonald, Jr., Comprehensive Elementary School
EVERETT A. McDONALD, JR. SCHOOL CHORUS "SOUND THE TRUMPET" — *Purcell* "WITH A VOICE OF SINGING" — *Shaw*	Miss Nancy Joy Koch, Conducting
"PHILOSOPHY OF THE EVERETT A. McDONALD, JR. COMPREHENSIVE ELEMENTARY SCHOOL"	Mr. Charles Walker Assistant Superintendent for Elementary Education
REMARKS	
MRS. ALTA S. LEARY	Elementary Supervisor, Emeritus Centennial School District
MRS. ELLA K. RHOADS	Master Teacher of Social Studies William Tennent High School
MR. FRED J. STACKPOLE	Centennial School Board, Member
INTRODUCTION OF SPEAKER	Mr. Donald Vaughan Director of Learning and Pupil Services
SPEAKER	Dr. Carl McDaniels George Washington University
Title— "Education: A Careful Blend of Technology and Humanology"	
REMARKS	Dr. Everett A. McDonald, Jr. Superintendent of Schools, Centennial School District
PRESENTATION OF PHOTO ALBUM	Richard McDonald
PRESENTATION OF TAPE INTERVIEW	Keith Kirkner
EVERETT A. McDONALD, JR. SCHOOL CHORUS "ONCE TO EVERY MAN AND NATION" —*York*	Miss Nancy Joy Koch, Conducting
BENEDICTION	The Rev. Carl M. Kleis, Pastor North and Southampton Reformed Church
POSTLUDE	Everett A. McDonald, Jr. School Orchestra Mr. Bartholomew Anello, Conducting

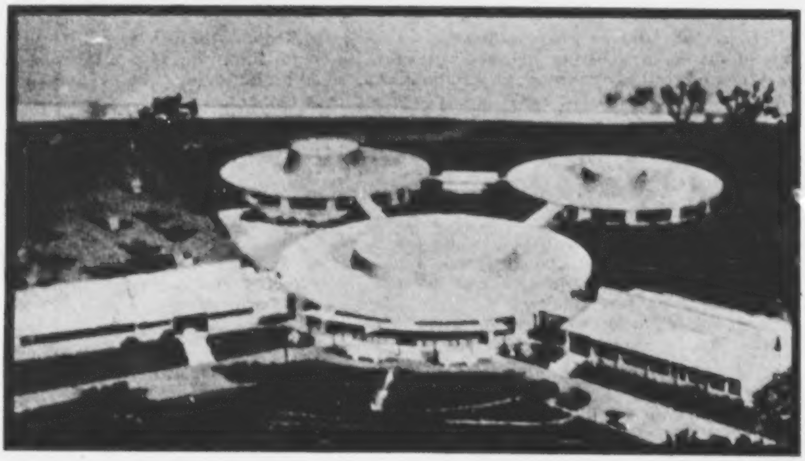
The building will be open for inspection immediately following the program.
Refreshments will be served.

.1629

Progress Report No. 5

August, 1970

E. S. E. A. Title III Grants



Everett A. McDonald Elementary School

Centennial Schools
Warminster, Pennsylvania

1630

Progress Report

on the

Planning and Construction

of the

Everett A. McDonald Elementary School

INTRODUCTION

Since the January 1969 publication of ***Progress Report 4***, which was also the date of the opening of the Special Experience Room facilities, the Title III Project has focused on programming, dissemination, and groundwork for evaluation. ***Progress Report 5*** will discuss these phases of development.

PROGRAMMING

STAFF

A question that is frequently asked by visitors concerns how this particular combination of people were selected to staff the Project. The question can only be answered by first referring to an atmosphere of exploration and innovative educational planning which is generated and sustained in the Centennial School District by Dr. Everett A. McDonald, Superintendent.

The inception and development of the potentialities of the Special Experience Room are a direct reflection of the sensitivities of Dr. Henry W. Ray, Director of Teaching and Learning Resources. He has had experience at all levels of instruction, curriculum, and administration. His insight into perception, learning, and the humanities led to his design of the Project.

The orientation of Project efforts involves integration of the arts and sciences with personalized learning experiences that enhance perceptual awareness. To accomplish this Dr. Ray sought a staff that was diverse in background but capable of fashioning a humanistic approach to curriculum in a multi-media center.

The six staff members combine background in science, industrial arts, language arts, psychology of reading, dramatics, dance, fine arts, commercial art, photography, school psychology, guidance, and instructional technology. Each member of the staff is fully certified in his field, holds a Masters degree, and has at least seven years of experience in public education. With the exception of the language arts and reading specialist, the staff were all drawn from the local school district. Beyond his professional experience and credentials, each of the staff contributes a creative sensitivity in developing approaches for students and teachers to become more perceptive of themselves in relation to their environments.

CURRICULUM DEVELOPMENT PROCEDURES

In *Progress Report 4*, we stated that "If this project is to be unique and innovative in resculpting the traditional curriculum, all educators and students involved with this project must be willing to explore new and different strategies in the teaching-learning process." Throughout the program development phase of the project, we have attempted to encourage this.

The development of lessons for use in the Special Experience Room has been a team effort involving the teacher who is interested in having a lesson in the Special Experience Room and members of the Project Staff. More are beginning to explore new and different strategies as they gain confidence in, and an awareness of, new avenues in the teaching-learning process. More are beginning to see the Special Experience Room as a part of the classroom procedures. As teachers become more involved, so do their students.

When a teacher is interested in a program in the Special Experience Room, she completes a Program Preparation Sheet which is sent to the Project Staff. On this she describes the kind of experience she is considering, characteristics and needs of her class, concepts that are being developed in her unit of study (if applicable), and the types of lead-up and follow-up activities she plans to use in the classroom.

The staff uses this to begin gathering materials in preparation for an after school planning session(s) with the teacher and as a take-off point during the session(s).

With the amount of time and multi-media materials involved in the preparation of new lessons, we are pleased that, based on a 180 day school year, we have developed an entirely new lesson every 3.3 days.

DESCRIPTIONS OF SAMPLE PROGRAMS

The following are representative samples of the divergent lessons that have been developed thus far:

Color Awareness

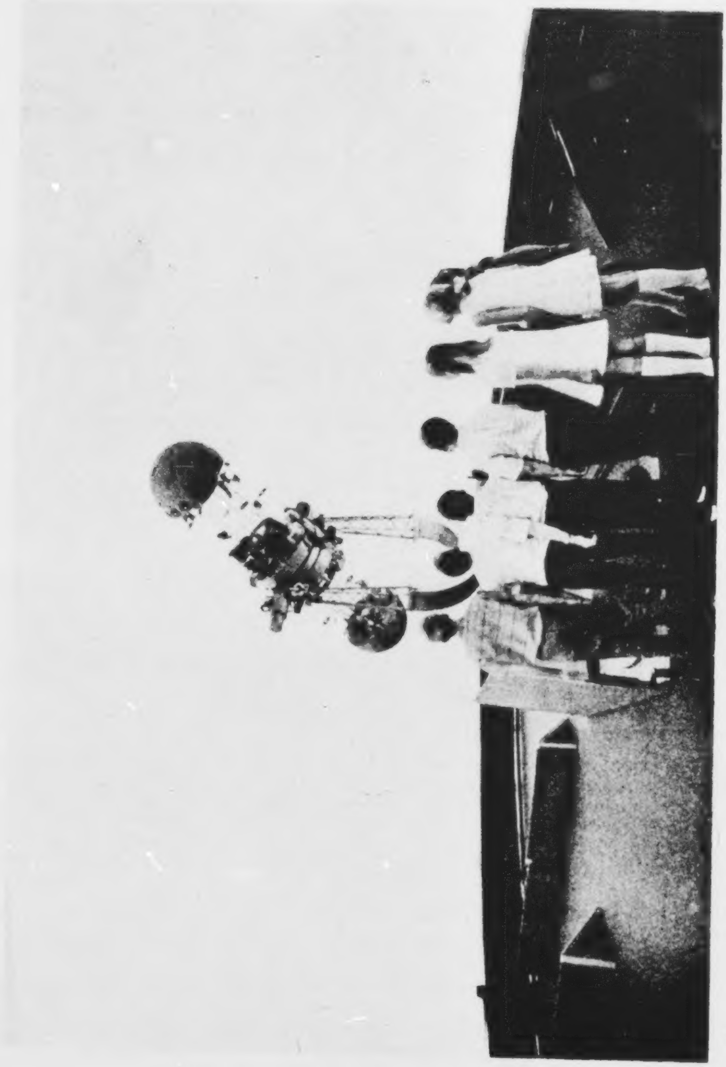
The purpose of this experimental lesson is to sensitize children to the diverse colors of their environments by having them *pay attention to a particular color* in different contexts. A series of slides are projected and the children are asked to find red, yellow, etc. The same series of pictures are presented, but each time the children are asked to search out a single color. Identifiable shapes or objects can be distorted by changing the focus and thereby highlighting the color.

Influences of Environments

A series of programs have been designed around science lessons involving a study of environments. During the programs students react to unique and abstract environments presented in the Special Experience Room, e.g., upside down city, electronic sounds, creating a sense of falling using the planetarium instrument. After each experience, students are asked to write a response for each of a series of words. Later, in the classroom, analysis of the word-association technique used during the program generates interesting results about how sensitive we are to our own human environments.

Orbiter Project

This program grew from a classroom project involving space flight. Over a period of about two months, the students formulated how a simulated earth orbit could be achieved in the planetarium. They selected their astronauts, designed and constructed a space vehicle, practiced tracking and reading computer settings, and produced a closed circuit television production that was seen by most of the school through their classroom receivers.



The actual flight, with all of the technical problems of monitoring and producing a part taped and part live television show, was done entirely by students. Members of our staff served in an advisory capacity.

In the actual flight the astronaut "moved" up-down, left-right, and rolled in a space craft. The planetarium instrument was "flown" by the student astronaut who tried to steer the craft. The astronaut was working with the concept that as the sky moves down, he in reality was moving (pitching) upward. The other directions of travel were similar reversal problems.

A video tape has been produced, and will soon be available on Centennial's $25M^2$ system. This type of space flight experience can be available at many levels of sophistication. Other classes in the district may become interested in doing parts of, or a complete, similar experience.

Star Map Lab

Students used the planetarium sky to learn how to use their individual star maps. With the aid of flashlights, they could read their maps, and "check" various feaures in the sky.

A change of latitude or seasons, forced students to view a star map in other positions, and identify stars, and other interesting objects in a different sky. We can prepare very simple maps, enabling this experience to be used by students of many ability levels.

Transportation

A combination of sound effects, 8mm films, and slides are used to show the usual (trains, cars, planes, boats), the unusual (wheel chair), the old (Model T), and the new (Lunar Module) means of transportation.

A 360° projection of downtown Philadelphia with sounds of traffic, also can be used to introduce a discussion about various means of transportation the children may choose to go from one place to another.

Food

This lesson was planned and prepared by two teachers with Project Staff assistance. Slides for simultaneous projection were taken of a group of third grade school children as they studied food groups, planned meals, shopped, prepared breakfast and lunch, visited a bakery to see the steps taken in preparing bread, and baked bread themselves in their classrooms.

The lesson was used as a culmination to their unit of study on food.

Shadows

A single light source in the center of the otherwise completely dark Special Experience Room enables the entire class to experiment with shadows cast on the dome. This lesson has been done with primary level children who discuss what they know and what they would like to explore with shadows.

Concepts that were developed in some classes were: what causes shadows, why shadows change in size and shape, silhouettes, illusions created by shadows.

Shadows can be controlled and thereby provide immediate feedback to children as they take different positions or move different parts of the body.

Pantomiming activities can also be incorporated into lessons with shadows.

Development of Visual Imagery

Visual imagery and symbology are developed through study and discussion of projected slides. Photographs of cloud formations, aerial panoramas, reflections and line and shadow patterns seen in nature are projected in the Special Experience Room. Students are encouraged to express their impressions and their interpretations of what they see. They draw parallels with their natural phenomenon, with mythology, and with familiar objects. Photographs of paintings, sculpture, and other forms of art accompany these actual pictures and natural phenomena to sensitize the students to the creative interpretations and techniques of artists. Students are also led to visualize the setting or mood suggested by particular sounds or music presented in a completely darkened room. Students are assisted in developing visuals depicting verbal concepts, music (i.e., folk songs) or poetry.

Value Clarification

Techniques developed to build upon in personalizing and integrating new percepts with past experiences and values. Strategies have been developed to focus the learners' attention on what he has seen, clarifying what seems right or relevant for him, and how his behavior does or will reflect his priorities, personal tastes and values. This approach pervades many lessons in the Special Experience Room and materials and descriptions of techniques are available to teachers for use in the classroom.

Creative Body Movement

Music, sound, light patterns, pinpoint light, colored flashlights, blended colored lights, and projected images are example effects used in our divergent body movement programs. These might center around work with children and their shadows in directed and free movements, in interpretative dance, and in the dramatization of feelings or events induced by verbal, visual, or auditory suggestions.

Springboards for Creative Expression

Single concept films, slides, music, voice, and interpretative dance have been developed to stimulate and elicit creative expression. Examples of these experiences which can be used in various combinations are: 8mm single concept films of reflections on water, surf, a balloon vender; slides of seascapes, cloud formations, works of art; recorded electronic music, jazz, sounds of sea, the city; odors; lighting effects; and recorded prose and poetry.

Culture Study*

Many comparative culture lessons have been developed. An example of one is visual presentation of slides representing life in Afghanistan, Thailand, Hong Kong, and the United States. Four series of slides are projected simultaneously with relevant musical accompaniment. The set purpose is to have the children contrast and compare the cultures through the use of visual clues. It is suggested that children traveling through these countries cannot speak the language, and therefore, must rely totally on visual learning. Following this experience the students might write letters "home" describing the cultures. Other lessons look at specific aspects of cultures such as clothing, merchants, or family life. Music of the cultures is used as background to the presentation.

INDUSTRIAL ARTS PROGRAM

The Industrial Arts area includes equipment to work with wood, metal, ceramics, graphics, electricity, and plastics in the development of a broad-based resource area for learning. Both students and teachers are given an opportunity to increase cognitive and affective learning through experimentation and creative expression. The art teacher works very closely with the Industrial Arts Specialist to accomplish this. There is a constant interchange of new ideas, plans, and questions between the teachers and the Industrial Arts Specialist who is available throughout each school day. The following are some examples of activities in the Industrial Arts Area:

The use of the potters wheel is demonstrated to a class of students. Following the demonstration individual students make appointments with the Industrial Arts Specialist to work on the wheel. The finished projects are fired and glazed under the direction of the teacher. Ceramic work is very popular with children at all grade levels.

* In addition to comparative culture study, we also compare the total with the details of a city block or painting, the four seasons, the relationship of living things to their environment, ulilitarian structures with sculpture. . . . .

Thirty-seven first graders mass produced wind chimes in their classroom using ceramic clay. Each child was given a job on the production line. The jobs were: rolling clay, cutting shapes, perforating, scrap removal, texturing and quality control. The green clay was fired in the Indestrial Arts lab and then returned to the classroom for application of the glaze. Final firing was done in the Industrial Arts lab then pieces were tied together in the classroom. Wind chimes and mobiles have since been constructed by other children from many different materials.

Two fifth grade boys shaped the blossom of a flower from unfired ceramic clay; then used the vacuum forming process to make a display on which the parts of the blossom were painted and labeled.

A Retarded-Educable class made their own perceptual training puzzles out of a colored plexiglass.

Two fifth graders built a relief model of landforms using Tri-wall cardboard, plastered with a mixture of perlite and cement, and then painted and labeled. Dioramas using these materials are frequently designed and built by children of all grade levels.

Four fifth grade boys constructed an "Optical Illusion Box" using one-way mirrors, back lighting and rear-view projection. The purpose of this box is to study the characteristics of light and how perception of light effects can be altered by such things as reflections and refraction.

A Retarded-Trainable class mass produced simple rubber-band propelled paddle boats. Many types of mass production experiences have been arranged for many classes in the IA room as well as in classrooms.

The class for emotionally and socially disturbed chidren is transported to the I.A. room weekly for work planned jointly by the class teacher and the I.A. Specialist.

Work with stained glass: The glass pieces were glued together in the classroom under the direction of the art teacher then transported to the Industrial Arts lab and fired. Children came to the lab to remove sharp edges with a honing stone before taking objects home.

A small group of boys came in after school to build model cars which they have designed and for which they are constructing all parts including the stylized fiberglass and polyester bodies. Children may use facilities before and after school by appointment.

Two fifth grade girls have constructed a simple working model of a hydroelectric plant for science class demonstrations.

Fourth grade boys built models of five basic types of fixed bridges (cantilever, arch, truss, simple beam and suspension) as part of demonstration for social studies unit.

Two boys built a weather station for a science project.

Study of the composition of a bone by cutting out cross sections.

A sixth grade class is publishing a book. The children have made the paper, written the copy and will print and bind the book.

MEDIA DEVELOPMENT

HAND CONTROL UNIT

The problem of controlling a total program involving multi-media by the person who is in the room with the students led to the development of a small hand-held unit which includes a pointer, microphone, reading light, and a series of illuminated push buttons. These respond similarly to a touch telephone system. The 10 buttons presently allow over 200 circuits of control. A complex relay system responds to the original commands.

This comprehensive switching ability permits one person to spontaneously change the previously planned order of a lesson so that it can be instantly tailored to the pace of the particular group. An obvious saving of manpower and efficiency of operation results from its use.

The total control system is extremely flexible and allows continued growth as more needs arise.

A large part of the installation work that we did involved installing remotely-located relay blocks to turn off and on a group of 110 volt receptacles contained in the relay units with the use of only low-voltage wiring. The same low-voltage switching system also controls room lights and sound. Eventually, it will control the planetarium instrument as well.

NAVIGATIONAL LABORATORY

A small, used planetarium unit and dome was recently acquired for use in one of our junior high schools. This planetarium has been re-designed by us to enable students to operate it as a problem-solving tool. A unique feature is the dome touching the floor on one edge. This tilted dome concept enables students to look forward into the dome, instead of trying to look straight up while they are plotting celestial positions and conducting other experiments involving space science. The insallation opens whole new dimensions for the current junior high science program.

We are designing experiments which allow students to act as scientists: gather data supplied by the instrument; manipulate the sky to determine what happens in different latitudes and hours of right ascension; and test their hypotheses.

We also plan to provide mixed media presentations in the dome thereby enabling this new installation to utilize materials we have developed in the Special Experience Room.

SCHEDULING POLICY

Because the Title III Staff feels an obligation to the total field of education, requests from other school districts for lessons have been very willingly accepted. The amount of requests, however, has made it necessary to set the following guidelines for scheduling:

1. The Project Staff is prepared to teach lessons to groups outside the school district on Thursdays of each week.

2. Arrangements should be made with the Project Director one month before the requested date for the lessons.

3. Centennial School District classes will be scheduled on Thursdays in the remaining time that is available.

Community organizations, e.g., Boy Scouts, Brownies. . ., also have requested lessons. We have scheduled them at times that are mutually feasible. Our first obligation, however, is to the educational program of the school district, and since the facilities are available to all children living in the school district area, these take precedence over extra curricular activities.

In these ways, we feel that we can better meet the needs of our own school district as well as those of the greater community.

DISSEMINATION

Our major felt need at this phase of the project is the sharing of our developments and discoveries. Reflecting this need, dissemination activities have expanded. Three issues of a newsletter entitled "Happenings in the Special Experience Room" have been distributed to every teacher in the district and have been included in the orientation materials for visitors. "Happenings" will continue to be published periodically. Presently we are organizing publications about the Elementary Industrial Arts Center. On a more frequent basis, two copies of the weekly schedule of Special Experience Room activities are sent to each building in the school district. Teachers and administrators are encouraged to arrange to observe partcular lessons of interest to them. The response has been good, despite the usual difficulties in classroom coverage for teachers. Faculty members of the respective school within the school district, as well as specialized groups such as school district principals and kindergarten teachers, have attended in-service demonstration-discussion meetings on the development and potential development of the facilities. Following these in-service meetings, we have noted an increase in each respective school's number of requests for assistance in program development. For this purpose, a program preparation sheet is being used. The Project Staff also has met periodically with the principal and staff of the Nativity of Our Lord School to discuss recent developments of the project.

Even though our lessons in the Special Experience Room are constantly changed and developed for specific groups of children from nursery through twelfth grade represented in our divergent classrooms (physically handicapped, gifted, emotionally disturbed, retarded trainable. . .), we have been developing procedure scripts as examples of what can be done. It is our plan to disseminate these to educators who are interested in specific "how-to-do-it" information. Along with this, we hope to develop an entire manual to advise and assist other educators in the development of their own special experiences facilities. We have built a portable structure comprised of three connected, angled projection screens and a projection table as an example of one possible procedure one might follow with a relatively nominal investment.

Dissemination-demonstrations for educational institutes and groups outside the school district comprise a large portion of the Project Staff's time. Our purpose in doing these is to make as many people as possible aware of our approaches, de-

velopments, and procedures. Many have requested advice on how they can develop Special Experience Rooms in new buildings and in existing structures. In addition, many are interested in possible ways to incorporate our techniques and approaches to classroom settings. We have attempted in our dissemination-demonstrations to meet the expressed needs and interests of these visitors. From September 1969 through June 1970 our records indicate that 700-725 educators representing 50-60 educational institutions or professional organizations attended our dissemination-demonstrations. Most of these sessions involved two or more staff members and were structured to provide sufficient time and information for the group's needs and interests. Our September through June records also indicate that a total of 830 undergraduate and graduate students who were enrolled in numerous university education courses were instructed by the Project Staff in the Special Experience Room.

Our *Progress Reports* are distributed throughout the United States. A sequential examination of each reveals developments from the inception of the project to the present.

A cut-away view of the Special Experience Room has been developed for distribution. Its purpose is to provide groups, before arrival, with a visual orientation to the room.

Staff members have been and are scheduled at local, state, and national conferences for such organizations as Association for Curriculum Supervision and Development, Council for Exceptional Children, and American Industrial Arts Association to present papers about the underlying philosophy and function of the project.

Our Industrial Arts Specialist was chosen from a possibility of 200 people to be one of an 18 member national committee delegated to set up guidelines for an elementary industrial arts curriculum. He has presented his philosophy at a meeting of the Pennsylvania State Advisory Committee for Industrial Arts and at the National American Industrial Arts Association Convention in April 1970.

Even prior to the construction of the facility, Dr. Henry W. Ray, the originator of our project, authored articles about the underlying tenets of the project in professional journals e.g., *NEA, Social Education, Audio-Visual Instruction.* In addition to his current position as Director of Learning and Teaching Resources for the District, he also serves as a consultant to U.S.O.E. Projects at New Mexico State University; Tuscaloosa Schools, Alabama; and Humanities Project, Neshaminy Schools, Langhorne, Pennsylvania.

As a member of state and national committees, and as an Associate Editor for the *Journal of Communication,* Dr. Ray has been acquainting professional colleagues in different circles with the objectives and developments in the project. In recognition of his impact on curriculum aln instuction, Dr. Ray recently had received awards from the Pennsylvania Department of Education and Pennsylvania Learning Resources Association for his work in heuristic learning, perceptual awareness, and teaching humanities.

The developments in the Special Experience Room have also been reported through articles in *Saturday Review, Read Magazine, Smithsonian Magazine,* and various newspapers in the Philadelphia area.

Various in-service programs and workshops have been conducted including the 1968 summer workshop reported in the January 1969 *Progress Report 4.* More recently, the Special Experience Room and Industrial Arts Center served a variety of summer 1969 and 1970 teacher-training activities. Title III staff were directly responsible for workshops in Planetarium Science, Elementary Industrial Arts, Humanities in Social Studies, Language Arts, Springboards for Creativity in the Classrooms, and Value Clarification. The facilities and staff were also involved with many other local workshops throughout the summer. Summer Session undergraduate and graduate classes from nearby colleges were frequent visitors to the Title III Project and the McDonald Elementary School.

The underlying theme to the Social Studies, Language Arts and Creative Expression workshops was to sensitize participants to other than print-oriented means of presenting the concepts pertinent to a particular area of study. Participants were encouraged to explore the uses of audio equipment, simulation techniques, and the visual arts. Art as a personal and social commentary and the relationship between art and science were stressed. Activities were designed to contrast the non-verbal communication with "talk and type". The materials and techniques developed by Project Staff and their application to units of study were demonstrated to workshop participants in the Special Experience Room. Teachers were continuously encouraged to discover what was personally satisfying to them and to explore means of adapting the activities for classroom use.

A one-week workshop for selected science teachers was led by the planetarium director to instruct participants in the operation of the Space Transit Plantarium instrument. Lessons based on an inquiry or discovery approach were developed with the planetarium. Emphasis was placed on capitalizing on the simulation capabilities of the instrument for teaching concepts of motion and relativity. A navigational laboratory was designed and teaching procedures were developed for its integration into the Earth and Space Science curriculum in the junior high schools.

The Elementary Industrial Arts Workshop was comprised of 12 classroom teachers who met in the I.A. Center for one week. The objectives for the workshop were to: 1) have teachers examine their notions about I.A. within the context of elementary education, based on their experiences with I.A. as a student and since becoming a teacher; 2) spell out how they woud use an I.A. area if there were one in their building or in their classroom, e.g., how could I.A. experiences be blended with other classroom objectives; what materials they would expect to be most useful.

The participants were encouraged to create what to them would be personally satisfying with the idea that they could then be able to teach or guide students in a parallel activity at the students own level of interests and skill.

Work with ceramics, vacuum forming, silk screening, plastics, and tri-wall cardboard construction were the most popular. Subsequent inquiries and requests for the services of the elementary industrial arts teacher substantiate that workshop participants had found relevance and a means of using this new dimension with their students.

EVALUATION

Accepting the premise that if a person is interested in a particular activity he will move toward it and will overcome obstacles to engage in that activity or to maintain contact with that activity, the project facilities have evidently been successful in providing something in which professional educators are interested. The obstacles are not great, but the requirement that appointments be made two weeks ahead of time, busing arrangements be made by the teachers, and traveling takes time from an already busy schedule are aspects of a visit to the Special Experience Room that must be dealt with separately from program planning. Most teachers also spend time in planning with the staff prior to the lesson in the Special Experience Room. Within the frame of reference we are finding that the Special Experience Room is being used more frequently and by a widening circle of teachers in each building throughout the district. Our records also show that teachers are returning to the Room. They are also seeing the inter-relatedness among units of study in the classroom for which they request a series of lessons in the Special Experience Room. These lessons are intended to build upon the concepts conveyed in previous sessions. We are finding this particularly with Social Studies units and Visual-motor development activities. From the types of requests we have we expect this interrelating of lessons to emerge in Science and Language Arts areas as well. This speaks well for the original design of the project toward developing a recognition among teachers and students for the relationships between the humanities and sciences, as well as the transfer of training from one skill area to another.

The Industrial Arts area has been an extremely popular place with the level of productivity being high and varied. Elementary children as a group being less inclined toward skepticism are therefore ready to build anything. The approach of the teachers has been "think about it, design it, build and evaluate whether and why the experiment came out as it did". A questionnaire has been used with some of the children, and we are working on a multiple choice questionnaire which will take less time and will be more specific.

Designing new lessons and acquainting school personnel with the teaching potential of a multi-media facility involves a freedom of thought and exploration that precedes the controls of formal evaluation. We have approached the task of evaluation in a manner which is descriptive, relatively uncontrolled, and more concerned with "possible outcomes" rather than "expected outcomes". Thus far, we have done this through the use of diaries, position papers, and questionnaires. We are looking for creative, new ideas in personalizing the school experience, rather than testing out he validity of standardized programs. We want teachers to experiment and work with us rather than to wait for proof and prescriptions.

Many teachers have become involved and are excited about developing lessons, but in many cases they seem intimidated by the "hardware" or the uniqueness of the Room. Recognizing this, the development of lessons for use in the Special Experience Room has been a team effort involving the teacher who is interested in having a lesson and members of the Project Staff.

Due to the inadequacy of pencil and paper tests as a means of evaluation and print as an effective means of dissemination for our Project, a closed circuit television system has been installed. The camera is sensitive enough to televise the behavioral reactions of the children in the darkened room. Problems of coverage without interference with the lesson or harm to the equipment are being resolved. It is expected that television will provide a valuable means of data collection and demonstration of the activities in the Special Experience Room.

In light of our objectives, we have developed a substantial number of lessons which fulfill the original design of the project. We are developing lessons with teachers in many subject areas for nursery through twelfth grade students including exceptional children in a variety of special classes.

VISITATION — DISSEMINATION-DEMONSTRATION

COLLEGES & UNIVERSITIES	DEPARTMENT
Temple University Philadelphia, Pennsylvania	Special Education Instructional Media Educational Psychology Curriculum & Instruction School Psychology
Elizabethtown College Elizabethtown, Pennsylvania	Elementary Education
Newark State College Union, New Jersey	Art Education
Pennsylvania State University University Park, Pennsylvania	Elementary Education Secondary Administration
Teachers College ,Columbia New York, New York	Science Education
Cabrini Junior College Radnor, Pennsylvania	Elementary Education
Patterson State College Wayne, New Jersey	Art Education
Millersville State College Millersville, Pennsylvania	Education Department Industrial Arts Department
University of Maryand College Park, Maryland	Special Education
University of Massachusetts Amherst, Massachusetts	School of Education
Bucks County Community College Newtown, Pennsylvania	Education Department
Bloomsburg State College Bloomsburg, Pennsylvania	Education Department
Eastern Baptist College St. Davids, Pennsylvania	Elementary Education
Trenton State College Trenton, New Jersey	Industrial Arts Art Department Supervision & Curriculum
Kutztown State College Kutztown, Pennsylvania	Elementary Education Art Department

West Chester State College West Chester, Pennsylvania	Education Department Instructional Media
Clarion State College Clarion, Pennsylvania	Communication Division
State University of New York Albany, New York	Education Department
Moore College of Art Philadelphia, Pennsylvania	Art Education
Harvard University Cambridge, Massachusetts	Carpenter Center of Visual Arts
University of Pennsylvania Philadelphia, Pennsylvania	Education Department
New Mexico State University Las Cruces, New Mexico	Education Department

Partial Listing of Visitors Representing Other Education Organizations:

NEA Department of Audio Visual Instruction
Hall of Science, Flushing, New York
General Learning Corp., New York, New York
Marianne Frostig Center of Educational Therapy,
Los Angeles, California
Board of Cooperative Educational Services,
New York, New York
Ford Foundation Educational Facilities Laboratory,
West Chester, Pennsylvania
Project Life, Washington, D. C.
Middle Atlantic Planetarium Society
Research for Better Schools, Incorporated,
Philadelphia, Pennsylvania
Smithsonian Institute, Washington, D. C.
Bureau of Handicapped, U.S. Office of Education,
Washington, D. C.
Bureau of Arts & Humanities, U.S.O.E.,
Washington, D. C.
McGraw-Hill Publishing Company
Macmillan Company
National Office, Council for Exceptional Children
State Department of Education in Pennsylvania,
Delaware, Illinois, & New Jersey

"The visit to your school opened up many new perspectives for teachers and that is exactly what I wanted to happen. We are in the throes of planning for a new building and the inclusion of a planetarium is very much a possibility if the teachers can agree that it can do much to supplement and enrich our curriculum. Your use of the Special Experience Room certainly does prove the fact that a facility such as this can accomplish a great deal toward helping the children understand concepts that otherwise would be difficult to grasp."

"Certainly appreciate the innovative and enthusiastic presentation you gave to our students last semester. They are thrilled with the opportunity that media provides for providing more complete learning experience. In fact, several of the students decided to take your ideas and adapt them for a term project of their own."

"I am sure that this visit with you will have a great impact on our future planning."

"I certainly want to thank you for the valuable and exciting material which you sent me recently. I have reviewed all of the data on your project as well as the material which I recently received and undoubtedly I can assure you that I consider your project of great value."

"Needless to say, your building is unique and is serving needs that we have been hesitant to identify. This is revealing to a conservative area such as ours."

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For Inquiries

Please write:

Dr. Charles R. Walker

Centennial Schools

Warminster, Pennsylvania

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LEGAL REFORM OF SPECIAL EDUCATION: EMPIRICAL STUDIES AND PROCEDURAL PROPOSALS

DAVID KIRP
WILLIAM BUSS
PETER KURILOFF

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Legal Reform of Special Education: Empirical Studies and Procedural Proposals

David Kirp,[*] William Buss,[**] and
Peter Kuriloff[***]

In the past few years, lawyers have assumed an increasingly active role in disputes over the adequacy of education for the handicapped, promoting particular policy goals both through legislation and in test case litigation.[1] The first Part of this article briefly describes the education typically provided for the handicapped, noting the criticisms which present practices have provoked. It also posits an explanation of the durability of the status quo, drawing upon certain organizational attributes of special education. Part II makes a preliminary assessment of the effects law reform has had on special education through three case studies of sites where courts or legislatures have mandated substantive or procedural change in educational opportunities for the handicapped. Part III offers a general, and more speculative, appraisal of the utility of one particular legal framework, procedural due process, for making correct education decisions with respect to the identification and treatment of handicapped children.

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[*] Acting Associate Professor of Public Policy, Lecturer in Law, and Senior Research Associate, Project on Childhood and Government, University of California, Berkeley. B.A., Amherst College, 1965; LL.B., Harvard University, 1968.

[**] Professor of Law, University of Iowa. B.A., Yale University, 1955; LL.B., Harvard University, 1960.

[***] Assistant Professor of Education, University of Pennsylvania. B.A., Antioch College, 1965; Ed. D., Harvard University, 1970.

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[1] For an array of the specific problems on which lawyers have been active, see *Symposium—The Legal Rights of the Mentally Retarded*, 23 SYR. L. REV. 991-1165 (1972).

I

EDUCATION OF THE HANDICAPPED

Handicapped, or "exceptional" or "special", children form an extraordinarily diverse group, estimated to include between 8.7 and 35 percent of the entire student population.[2] From the viewpoint of the general educator, all that the handicapped have in common is that they differ from normal students. Some have problems so severe that their need for special educational attention is self-evident; they literally cannot survive without almost constant assistance.[3] The learning deficiency of most exceptional children, however, is slight and hard to detect.[4] Children who systematically write letters backwards, write in mirror fashion, or seem not to read some letters are common phenomena in lower elementary grades.[5] In many cases, children who have physical disabilities which might interfere with learning can not be distinguished by school officials from their supposedly normal classmates. Children with slight loss of hearing or sight can often compensate for their difficulty and thus go undetected until a systematic screening program is introduced, as can children with psycho-linguistic learning disabilities. Typically, state law denies the most severely handicapped youngsters any right to publicly supported schooling. For the rest, a bewildering variety of special categories distinguishing both type of handicap (*e.g.*, between blindness and retardation) and severity of handicap (*e.g.*, between educable and trainable retardates) have been adopted.[6]

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[2] N.Y. STATE COMM'N, REPORT ON THE QUALITY, COST AND FINANCING OF ELEMENTARY AND SECONDARY EDUC. 9B.2 (1972). The spread in the figures is almost wholly accounted for by disparities in estimating the percentage of brain-injured and learning-disabled children.

[3] *See generally* Kirk, *Research in Education*, in MENTAL RETARDATION 57 (H. Stevens & R. Heber eds. 1964).

[4] *See* E. RUBIN, C. SIMSON & M. BETWEE, EMOTIONALLY HANDICAPPED CHILDREN AND THE ELEMENTARY SCHOOL 3132, 3134 (1966). *See also* Dunn, *Special Education for the Mildly Retarded: Is Much of It Justifiable?*, in PROBLEMS AND ISSUES IN THE EDUCATION OF EXCEPTIONAL CHILDREN 382 (R. Jones ed. 1971).

[5] *Compare* Kramer, Diagnosis and Classification: Their Purposes and Uses in Epidemiological and Health Services Research *with* Meyer, Screening and Assessment of Young Children at Developmental Risk (1973) (reports prepared for the Project on the Classification of Exceptional Children, Vanderbilt University).

[6] Among the categories of exceptionality which are defined by I.Q. test score are: borderline, mild, moderate, severe and profound mental retardation. *See* Brison,

A. Criticisms and Suggested Reforms of Classification Schemes

1. The Severely Handicapped

Most severely handicapped children are classified as ineducable and are denied access to publicly supported instruction. But this practice is inconsistent with the research findings that all children are educable, that is, able through instruction to move from relative dependence to relative independence. Many of these children—estimated to number between 450,000 and 4,000,000[7]—spend their entire lives in state-run institutions, which, while providing minimal care, lack the resources to undertake any training in self-help. Private schools licensed by the states do train children with specific handicaps. But because these schools are self-supporting, they generally enroll only children from well-to-do homes. While a few states have sought to alleviate this fiscal inequity by providing vouchers for handicapped youngsters,[8] the burden of caring for the severely handicapped falls most heavily upon the poor, the group least able to sacrifice the time and energy needed to ensure adequate educational help.

Even when public schools provide some instruction for the severely handicapped, they do not do enough. Autistic children, for example, require costly, highly structured, professionally staffed programs. Placing autistic children in any other type of program is viewed as the functional equivalent of excluding them from school.[9]

These criticisms of the education of severely handicapped children view the public schools as doing nothing, or too little, for this group. The suggested remedy is to create additional special programs or make available additional resources for existing programs for hard-to-educate children. The criticisms provoked by the schools' treatment of the mildly handicapped, however, are quite different.

2. The mildly handicapped

Special programs for the mildly handicapped have been faulted for a host of reasons: they misclassify students, enroll a disproportionate

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Definition, Diagnosis, and Classification, in MENTAL RETARDATION 10 (A. Baumeister ed. 1967). Other categories are: hearing-impaired, visually handicapped, speech-impaired, physically handicapped, brain-injured (both minimally and severely) and emotionally handicapped. *See* Rossmiller, *Resource Configurations and Costs in Educational Programs for Exceptional Children* in 3 NAT'L EDUC. FIN. PROJECT, PLANNING TO FINANCE EDUCATION 61 (R. Johns, K. Alexander & K. Jordan, eds. 1971).

[7] *Compare* THE EXCLUSION OF CHILDREN FROM SCHOOL 3 (J. Regal ed. 1971) (DHEW Grant OEG-D-70-3126) *with* 118 CONG. REC. H1257 (1972) (remarks of Congressman Vanik).

[8] *See, e.g.*, CAL. EDUC. CODE §§ 6870-74.6 (West 1973).

[9] *See* Tidewater Soc'y for Autistic Children v. Tidewater Bd. of Educ., No. 426-72-N (E.D. Va. Dec. 26, 1972).

share of minority children, appear educationally inefficacious, and too readily become permanent assignments.

a. Misclassification

"Misclassification," as the critics use that term, means two quite different phenomena. First, it may denote the misapplication of agreed-upon criteria. When, for example, the school violates state law by assigning a student with a 100 I.Q., to a class for the mildly retarded, misclassification is evident. If, however, the criteria for classification are more subjective—involving, for example, teacher judgments of student readiness or motivation—problems of misapplication of criteria are considerably more complex.

Misclassification also may denote a dispute over how data are gathered so that established criteria can be applied. Even if a school consistently distinguishes between handicapped and normal students on the basis of a particular test, the test itself may be inadequate or susceptible to multiple interpretations. Many documented instances of misclassification are of this variety. In Washington, D. C., for example, the school system concluded that up to two-thirds of its mildly handicapped students were in fact normal. This reversal in judgment resulted from the substitution of individually administered I.Q. tests for group aptitude tests.[10] Similarly, in a study of 36 Philadelphia-area school districts, a change in testing indicated that two-thirds of the mildly retarded students were misclassified.[11] Disputes over the appropriateness of using English-language tests to place non-English-speaking students in special programs pose similar issues. Such tests, critics argue, can determine only the extent of acculturation, not ability. The suggested remedy for improper measurement of student ability is the adoption of different testing methods, including individually administered tests and native language or culturally-neutral aptitude tests. Erroneous placements may also be reduced by improving the decision-making procedures which implement present test results.

b. Differential Vulnerability

That certain types of students are particularly vulnerable to special classification makes the critics uneasy. Not all children are even considered for special programs, and those who are do not represent a random sample of the student population. Students who make life difficult for the regular classroom teacher are most apt to have their normal status questioned: more boys than girls[12] and more aggressive than quiescent students are identified as possibly handicapped. White students typically must display both intellectual and behavioral quirks to be considered for special classification, while intellectual difficulties alone are sufficient to render Black or Mexican-American students suspect.[13] Non-white students are overrepresented in programs for the mildly handicapped by as much as 250 percent relative to their proportion of the school-age population,[14] a fact which evokes considerable political concern. Overrepresentation diminishes the possibility of school integration, may diminish the educational opportunities of minority students, and calls into question the legitimacy of the entire system of special education classification. Differential vulnerability may lead the school both to ignore the special needs of students who do not disrupt the classroom and to underestimate the educational potential of minority students. Suggested remedies include early and thorough evaluation of all students, procedural protections so that non-problem children are not overlooked and children particularly vulnerable to classification are not wrongly singled out, and the integration of minority and white students either by abolishing special programs for the mildly handicapped or by setting racial quotas for such programs.

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[10] Hobson v. Hansen, 269 F. Supp. 401, 490-91 (D.D.C. 1967), *appeal dismissed*, 393 U.S. 801 (1968), *aff'd en banc sub nom.* Smuck v. Hobson, 408 F.2d 175, 187 (D.C. Cir. 1969).

[11] *See, e.g.*, HEBER, A MANUAL ON TERMINOLOGY AND CLASSIFICATION IN MENTAL RETARDATION (American Journal of Mental Deficiency, Monograph Supp. 1961); B. HOFFMAN, THE TYRANNY OF TESTING (1962); S. SARASON, PSYCHOLOGICAL PROBLEMS IN MENTAL DEFICIENCY 482-87 (3d ed. 1959); Chase & Pugh, *Social Class and Performance on an Intelligence Test*, 8 J. EDUC. MEASUREMENT 197 (1971).

c. *Efficacy*

The efficacy of programs for the mildly handicapped frequently has been questioned. Studies comparing the performance of matched groups of students in regular and special programs generally conclude that, despite the additional resources in special programs, special classes generally have either no effect or a slightly adverse effect on both the motivation and achievement of students assigned to them.[15] Furthermore, these programs may impose a stigma of "differentness" without securing offsetting benefits.[16] Only in those rare instances when children with distinct learning disorders are identified early in their educational careers and their special teachers are technically sophisticated do these classes appear to succeed. To some, this demonstrated failure of these programs argues for their abandonment and for the adoption of careful strategies to ease the transition of most, if not all, such children into regular programs. A substantial diminution of the number of mildly handicapped children in special classes could be accomplished by vigorously implementing the presumption that regular classes are preferable to special classes and forcing the school to prove the contrary in each challenged case.

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[12] *See* N. Frazier & M. Sadker, Sexism in School and Society 86-94 (1973).

[13] *See* J. Mercer, Labeling the Mentally Retarded 67-82 (1973); *cf.* Jensen, *A Theory of Primary and Secondary Familial Mental Retardation*, in 4 Int'l Rev. of Research in Mental Retardation 33 (N. Ellis ed. 1970).

[14] *See* Kirp, *Schools as Sorters: The Constitutional and Policy Implications of Student Classification*, 121 U. Pa. L. Rev. 705, 759-62 (1973).

[15] *See* authorities cited in note 4 *supra*.

[16] Jones, *Labels and Stigma in Special Education*, 38 Exceptional Children 553, 560-61 (1972); *cf.* Zito & Bardon, *Achievement Motivation among Negro Adolescents in Regular and Special Education Programs*, 74 J. Mental Deficiency 20 (1969).

d. Permanent Placement

Special program assignment for the mildly handicapped is supposed to be temporary, enabling the student ultimately to return to the regular class. In fact, special placements often prove to be permanent assignments: one survey of urban school systems found that fewer than ten percent of the students identified as mildly handicapped ever returned to regular classes.[17] Regular review of special class placement coupled with a commitment to return students to regular programs as soon as possible, might well resolve this problem.

3. *The Enduring Status Quo*

Despite the flurry of criticism and demands for reform, the education of handicapped children remains largely unchanged: the severely handicapped generally go without education, enrollment in programs for the mildly handicapped continually climbs, and Blacks and other minorities continue to be considered for and classified as handicapped in disproportionate numbers. There is little evidence of improvement in the syndrome of misclassification, ineffective programs for those classified, and relative irreversibility of the classification decision. The simplest explanation for this lack of change is that those who run the schools are at fault. Critics who take this "blaming" view generally regard the people who staff the present system as indifferent if not hostile to the fate of the handicapped and the putative handicapped. Such critics believe that change can take place only after "the rascals have been thown out" (or bought out, if tenure laws and union contracts complicate the issue) and replaced by more humane and child-oriented adults.[18] This view is probably wrong. There is little justification for the suspicion that educators either dislike students or perversely resist change. Yet two quite different factors—the peculiar nature of "the problem" and certain structural and organizational attributes of special education programs—together make major changes unlikely.

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[17] Gallagher, *The Special Education Contract for Mildly Handicapped Children*, 38 EXCEPTIONAL CHILDREN 527, 529 (1972).

[18] The popular literature critical of current public education practice ap-

Consider first the range of criticism canvassed above. The values upon which the critiques are premised diverge, and the proposed remedies cannot readily be reconciled. Not even the most responsive educational agency could both satisfy middle-class parents by providing diverse and intensive special programs and meet demands from minority parents that special programs be terminated because of their discriminatory effects. The lack of consensus concerning either the problem or its resolution suggests the wisdom of caution in probing what appears to be a particularly thorny patch of the educational thicket.

Each of the critiques defines a problem in isolation, thus particularizing what may be a more general educational policy dilemma. If the goal is incremental change, particularization may make considerable sense. It is more realistic than the view of the President's Commission of Mental Retardation that "all education should be special education, because each child is a very special child."[19] Such a statement is obviously true, but avoids the politically and organizationally difficult task of identifying at what points the social system resists translating the obvious into practice. Yet the incrementalist critic of present practices, whatever his particular persuasion, should recognize that change which affects the lives of exceptional children will also touch the lives of "normal" children and their teachers[20]—another reason to approach the issue cautiously.

Even if consensus concerning sound educational practice could somehow be created, the bureaucratic structure of public schooling would inhibit the possibility of radical change.[21] Highly bureaucratized

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pears to adopt this view. *See, e.g.*, E. Friedenberg, Coming of Age in America (1965); C. Silberman, Crisis in the Classroom (1970).

[19] *See* Douglass, *The Rights of the Retarded*, 23 Syr. L. Rev. 1109, 1114-15 (1972).

[20] "In order to accomplish anything more extensive than marginal modifications, innovators usually discover they have to alter processes and policies far beyond the specific area with which they are directly concerned." H. Kaufman, The Limits of Organizational Change 88 (1971).

[21] The following section borrows from a wealth of material which analyzes organizational behavior. While much of that material either speaks generally about organizations or utilizes the private firm as its model, the approach taken is useful in analyzing school behavior. *See generally* G. Allison, Essence of Decision (1971); R. Cyert & J. March, A Behavioral Theory of the Firm (1963); A. Downs, Inside Bureaucracy (1967); Lindblom, *The Science of "Muddling Through,"* 19 Pub. Ad. Rev. 79 (1959). For specific discussions of organizational behavior in education see S. Sarason, The Culture of the School and the Problem of Change (1971); Bidwell, *The School as a Formal Organization*, Organizations Handbook 994 (J. March ed. 1965); Corwin, *Education and the Sociology of Complex Organizations*, in On Education 156 (D. Hansen & J. Gerstl eds. 1967); J. Murphy, Grease the Squeaky Wheel: A Report on the Implementation of Title V of the Elementary and Secondary

organizations such as school systems devise routinized ways to handle recurring issues,[22] and changes in these procedures—what Seymour Sarason refers to as "regularities"[23]—occur slowly. Only in times of crisis, usually provoked by external events such as court-ordered busing or the election of a reformist school board, are the premises of organizational activity themselves reexamined.[24]

Stability is an organizationally useful attribute. It permits the maintenance of readily understandable and generally accepted school roles: student, teacher, specialist, administrator. It enables those who work in the school to fix expectations of their own and others' behavior. School personnel can count on important things getting done without having to do them themselves. Stability enables the school to shape, and preserve against outsiders, a culture of its own. Of course, fluctuations and stresses do occur in schools. And roles are determined, at least in part, by how the individuals occupying those roles choose to define them. But the general proposition that the high degree of bureaucratic routinization which characterizes schools is a source of resistance to change appears valid. To the extent that any change threatens existing organizational regularities, it imposes a cost. Change is likely to be implemented, and regularities altered, only if the perception of those who comprise the school organization is that the costs of not changing exceed those imposed by the reform.[25]

B. *Organizational Characteristics and the Difficulty of Reform*

The preceding discussion speaks generally of educational policy change. But it is possible to develop more precise links between the organizational characteristics of special education and the practices which have evoked critical attention. Limited knowledge is one such characteristic. The response to almost any interesting question concerning the education of the handicapped is either that the answer is unknown or that no generalizable beneficial effect of a given treatment can be demonstrated. This lack of knowledge, which is hardly peculiar to

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Education Act of 1965, Grants to Strengthen State Departments of Education (1973) (DHEW, grant 05-71-132; published by the Center for Educational Policy Research, Harvard University).

[22]
> [T]he thrust is to routinize, limit uncertainty, increase predictability, and centralize functions and controls. Whether the lure is security, power, growth, or profits, and whether the field is government, industry or welfare, bureaucratization proceeds apace.

C. Perrow, Organizational Analysis 67 (1970).

[23] S. Sarason, *supra* note 21, at 62-87.

[24] "Change [in bureaucracies] will occur only when external pressure becomes impossible to withstand." M. Crozier, The Bureaucratic Phenomenon 111 (1964).

[25] *Cf.* P. Blau, The Dynamics of Bureaucracy 263 (1963).

special education, makes it difficult to predict the consequences of any policy change. Resource limitation is another important characteristic of special education. Special education typically lacks the fiscal capacity needed to perform even those tasks, such as early educational intervention, which it can do well. Finally, the bureaucratic separation of special and regular education into separate subsystems—a demarcation defended and preserved by both—restricts the possibility of collaborative efforts on behalf of children whose status as special or regular students is debatable, and who perhaps could best be served jointly. That separation is not a demarcation of equals. Special programs, at least for the mildly handicapped, often occupy a marginal status in the public school system. A relatively new development, they remain somewhat a stepchild of public schooling. Their resource needs frequently get considered after the regular system's problems are resolved. Special educators, politically unable to assert the autonomy of their programs, often embrace the regular system's understanding of what "special" means; the program's purpose emerges, not from independent assessment, but from the pressures that it encounters. The marginal status of special education encourages its personnel to be "conservers," holding onto whatever they have.[26] It discourages efforts to reconceive the role of special programs—a process that might threaten the dominant school culture. As Burton Clark notes:

> A peripheral status will shape administrative ideology, calling for doctrines that will strengthen the organization. Since marginality seeks adjustment beneficial to security here and now, it also demands an administrative ideology that will provide a morally satisfying rationale for these adjustments.[27]

1. The Severely Handicapped

To what extent are those special education practices which have drawn critical attention made more comprehensible even justifiable) by relating them to these characteristics? The exclusion of severely handicapped children from the public school structure seems traceable, at least in part, to lack of both pedagogic knowledge and resources. It may well be that all children are educable. But that does not mean that schools know how to provide an education for the severely handicapped. Historically, the function of the public schools has been viewed as training in the three R's. The education of those students who needed a different kind of instruction was left either to state-run institutions or to the private market. While schools have gradually extended their reach to assume responsibility for harder-to-educate youngsters, the demand that schools provide appropriate education for the severely handicapped calls for nothing less than a redefinition of the institutional knowledge base. For some classes of children, such as the autistic, what is known is so limited that the demand may be quixotic. Moreover, to be effective with severely handicapped children, the school is obliged to educate, socialize, and support their total social environment. The school must link itself to the community, working both to change some aspects of the community and to alter its own traditional mission in order to accommodate more fully the needs and demands of these children's families. Such change blurs distinctions between educational, social welfare, and even criminal justice institutions; it calls upon schools to modify their usual relationship to deviant community members. To the extent that public schools are asked to assume these functions, the traditional structure of public education is severely challenged.

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[26] For a discussion of "conservers" and other organizational types, see A. DOWNS, *supra* note 21, at 92-112.

[27] B. CLARK, ADULT EDUCATION IN TRANSITION. A STUDY OF INSTITUTIONAL INSECURITY 149 (1958).

Further, educating the severely handicapped is a costly activity which until recently no state educational system had ever wholly assumed. The relative scarcity of special education resources is likely to affect both access to schooling and the scope of what is offered. As presented to a court, the plight of the severely handicapped is straightforward and heart-rending. For that reason, courts are likely to preclude exclusion of these children on the ground of lack of resources. But success in court guarantees neither that the political process will provide additional resources for these children's education nor that the school bureaucracy will reallocate the money it presently receives to fulfill this new assignment. The structural division of education into regular and special instruction makes such reallocation even more unlikely, since the regular system simply has no incentive to surrender any of its resources. These same factors also help to explain why additional special programs for hard-to-educate children are not provided.

2. *The Mildly Handicapped*

a. Misclassification

The scarcity of special education resources is one notable cause of the misapplication of agreed-upon criteria, the alternate' meaning of misclassification. Unable to afford more personnel, the system may have to retain unqualified persons to do assessments or overburden the professional staff, encouraging it to take short-cuts.[28] Disputes over the validity of classification criteria are, in part, the consequence of inadequate knowledge concerning the means for distinguishing among students. What skills do standardized tests actually measure? Are culture-free or culture-specific tests more accurate or more useful? These questions have never been satisfactorily answered. Such queries evoke concern when possibly harmful consequences such as misplacement in an inefficacious special program may flow from the wrong choice. Resource constraints also may oblige the schools to utilize such criteria as group rather than individual tests which, in the view of the critics, may be less able to render the fine distinctions of ability and potential that the classification system calls for. Finally, I.Q. or aptitude tests, the criteria most frequently employed to sort students, do appear to reflect the cultural biases of the regular curriculum. Inadequate performance on such a test reveals to the regular system that the child should be treated as special. Use of a culturally neutral criterion, while possibly a better gauge of aptitude, yields less useful information to the regular system precisely because of its lack of bias.

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[28] See text at note 85 *infra*.

b. Differential Vulnerability

Each of the organizational characteristics of special education renders certain types of students vulnerable to classification as handicapped. Many special programs, developed by highly trained teachers working in a university setting with middle class students, prove of limited utility in public schools. The variety of special problems, the lesser expertise of the school's staff, and the organizational and political problems that must be addressed render the laboratory-developed techniques ineffective.[29] School personnel often do not know how to identify the students they can help or how to address the myriad problems encountered by the student and the school.

Resource constraints discourage special program personnel from extending the reach of their competence to all of the children, however labeled, who may need some special help. For example, if a child having difficulty in school remains docile in class and does not pose nightmarish problems for the regular classroom teacher, his problems are likely to go undetected until the last years of elementary school, when it is too late for effective intervention.[30] Resource constraints also render certain decisions about special program placement budgetary judgments, at least in part. The availability of space or funding for special programs, and not the particular needs of the child, shape the school's inquiry and influence ostensibly pedagogical appraisals.[31] Resource constraints are, of course, a universal lament. No one—certainly no public agency—would admit that it had enough of anything. If such constraints forced the system into making defensible priority judgments, allocating services on the basis of need, they would serve a useful purpose. But the absence of useful knowledge, particularly with respect to children whose handicapping conditions are mild, makes such matching difficult to accomplish. In many cases, given the state of the art, it may not be possible.

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[29] *Cf.* H. Goldstein, J. Moss & L. Jordan, The Efficacy of Special Class Training on the Development of Mentally Retarded Children (1965) (Univ. of Illinois Institute for Research on Exceptional Children).

[30] *But cf.* Gotts, Factors Related to Teachers' Irritability in Response to Pupil Classroom Behaviors 1967 (unpublished paper presented at the American Psychological Association Meetings, Washington, D.C.), who reports that extremely passive students may be as trying to the teacher as aggressive students.

The fact that special education is organizationally separate from and marginal to the regular system renders differential vulnerability more likely. Special personnel cannot seek out students on their own. They must convince the regular teacher that a given child has a problem which can perhaps be alleviated in a special class. Where the regular and special staffs know and trust one another, special personnel can play an important role in identifying and helping youngsters with learning difficulties. But the existence of special programs for students whose handicaps are not readily apparent, such as the mildly retarded and emotionally disturbed,[32] discourages such organizational bridges. It is difficult for special personnel to prevent the regular system from referring only children it cannot or will not teach. The apparently limitless elasticity of special programs for those with learning deficiencies or educational handicaps permits the regular system to transfer children who, for whatever reason, create classroom crises.[33]

The marginal organizational status of special programs fosters cooperation with this system of identification. Some special educators, notably those with a clear sense of their own role, will resist being manipulated in this fashion. But taking the troublesome child out of regular school programs is one service performed by special educators which others in the school system can recognize and appreciate. Although school officials may feel that a child whose teacher has in effect rejected him is better off in a special class, the matter is probably better dealt with by examining the crisis-provoking behavior of both teacher and student.[34] Such an examination is unlikely for several reasons: it is time-consuming and costly; it is anxiety-producing and unlikely to succeed unless the teacher is unusually flexible and the principal willing to assume a truly neutral position in a teacher-student confrontation. Removal decisions should also be appreciated as a tactic meant to ensure survival in the prevailing organizational structure.[35] The price of survival is, predictably, the differential vulnerability of certain types of students, especially non-whites and boys, to special classification.[36]

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[31] See text at notes 296-97 *infra*.

[32] "[N]o single definition of mental subnormality has ever been satisfactory to all concerned." H. ROBINSON & N. ROBINSON, THE MENTALLY RETARDED CHILD 27 (1965).

[33] The status quo's defense against such exploitation is the special system's authority to reject children whose test scores are either too high or consistently normal. But such resistance on the part of the special educator is unlikely ultimately to succeed. Since special classes can absorb only a small fraction of crisis-provoking students, the regular administration has only a limited stake in the placement of any particular student. It can simply continue to refer difficult cases until—because of hurried testing, elusive admission criteria or genuine disability—some troublesome students are admitted to the special class. In this way, the existence of special programs for the mildly handicapped enables the regular system to discharge its obligations to those who fare badly in normal school life.

c. Efficacy

Manipulation of school resources appears to have only a limited effect upon achievement for regular as well as special students.[37] That special programs for the mildly handicapped do not appear to benefit these students more than regular placement is not surprising; it mirrors what is known concerning the limited impact of ability grouping of normal students on achievement.[38] It is surprising, however, that these special programs, which cost two and three times what regular programs cost,[39] have survived in the face of their generally conceded inefficacy. Special educators have advanced at least a tenable explanation for this durability. Many of them argue that these students need the protection that smaller, self-contained programs can provide. Some students do indeed require special class attention; for them, regular classes would be a disaster. But the force of the argument for separatism is blunted by its over-use. The educational efficacy of programs for the mildly handicapped is, at best, undemonstrated. If, in fact, many special programs offer just smaller classes and respite from the pandemonium of the typical public school, those are benefits to which all children, normal and handicapped, could make legitimate claim.

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[34] *See* N. Kreinberg & S. Chow, Configurations of Change: The Integration of Mildly Handicapped Children into the Regular Classroom 137-47 (1973) (DHEW, Grant OEG-0-72-4359).

[35] In Clark's study of adult education [B. CLARK, *supra* note 27 at 65], the source of pressure was fluctuating student enrollment; here, pressure appears to stem from the demands of the regular system.

[36] Minority overrepresentation seems the clearest illustration of this differential vulnerability to labeling. It is, of course, risky to generalize about the behavior of groups of people, but white, middle class teachers do perceive minority students as different. Minority students may be less accustomed to expectations of public schools and less willing to satisfy those expectations. They may have come to recognize through individual experience and street corner socialization that school offers them little, if anything, of value. The behavior that accompanies such attitudes is likely to pose acute problems for the teacher concerned for classroom order and control, thus promoting the identification of disproportionate numbers of minority students as mildly handicapped.

[37] *See generally* J. COLEMAN, E. CAMPBELL, C. HORSON, J. MCPARTLAND, A. MOOD, F. WEINFELD & R. YORK, EQUALITY OF EDUCATIONAL OPPORTUNITY (published by Office of Education, U.S. Dept. of Health, Education and Welfare, 1966); C. JENCKS ET AL., INEQUALITY (1972); ON EQUALITY OF EDUCATIONAL OPPORTUNITY (F. Mosteller & D. Moynihan eds. 1972).

[38] For a summary of the ability grouping efficacy literature, see W. FINDLEY & M. BRYAN, ABILITY GROUPING: 1970 (1971).

[39] Johnson, *Special Education for the Mentally Handicapped—A Paradox*, 29 EXCEPTIONAL CHILDREN 62 (1962).

In resisting the integration of special and regular students, special educators purport to speak for their clientele. But representative advocacy is tricky business since self-interest and client interest are too closely linked. As the World Health Organization noted two decades ago:

> Unless subject to review at fairly regular intervals, protective legislation can easily become self-protective, guarding the right of those with vested interests in one or another category of handicapped persons rather than the persons themselves.[40]

The presence of such vested interests might better explain why the special programs endure despite their lack of apparent benefit. For both professional and political reasons, efforts to abolish particular categories of exceptionality are often perceived as a threat to the already insecure status of special programs; the proponents of such a policy from the special education ranks are viewed as "turncoats."[41]

d. Permanent Placement

Why does the label "mildly handicapped" routinely become permanent? The existence of separate organizational structures for regular and special students impedes movement back and forth. The factors which promote initial special class placement—the incapacity of the regular system to develop means of dealing with its deviants, the availability of the separate system to educate such youngsters, and the inadequacy (and misuse) of the criteria for distinguishing normal from special—help to explain the permanence of the placement. Neither the regular nor the special program has an incentive to return a special child to the regular program. In the special program, the child is treated as needing help and protection; to the regular program, he is simply a nuisance. As one school district teachers' manual notes:

> While the return of special class children to regular classes is seen as a very desirable and legitimate goal, its realization is not always

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[40] World Health Organization, *Legal Considerations of Mental Retardation*, in MENTAL RETARDATION 106-07 (J. Rothstein ed. 1961).

[41] Interview with Al Tudyman, Director of Special Education, Oakland Unified School District, in Oakland, California, March 20, 1973.

> easy. The regular program has, all too often, been relieved to see them leave and has dismissed or ignored provisions for their eventual return.[42]

The fact that the special programs have lower expectations for their students also increases the likelihood that placements will be permanent. All that is usually demanded of the special student is minimal achievement, if not simply acquiescence. If the student does badly, he confirms a prophecy that he is handicapped. For that reason, he is not prodded to do better. The structural separation of special programs permits the development of markedly different curricula to serve what are considered different populations. Even the special student who does admirably falls further and further behind his regular classmates whose schoolwork is considerably more demanding. Since special students are not expected to function normally, and since the resources and capacity to test that expectation are not readily at hand, reevaluation of these students is infrequent, occurring every two or three years.[43] By that time, the student may well have become special.

The discussion has traced the tendency of certain organizational characteristics—lack of knowledge, resource scarcity, and structural separation—to influence educational practices. There are, of course, dedicated and technically proficient teachers in special programs who help both organically deficient and emotionally disturbed children and who seek—sometimes successfully—to bridge the gap between special and regular programs. But these results do not flow from the organization of special and regular education; they occur in spite of it.

Yet the lesson to be derived from this discussion is not without ambiguity. Certain attributes of present special education programs militate against productive change. Some proposed changes may be unfeasible and others threatening to the existing structure of special programs; still others are simply unwise. But changes have occurred. Fifty years ago, there were no school-based special programs. Those students now considered to be mildly handicapped were either accepted as slow but normal or were denied access to the schools. Although this Article notes the rigidity of special programs, there are successful instances of ventures which combine special and regular classes, removing the global labels that the prevailing system imposes.[44] In short, change can and has occurred in the education of the handicapped. But how is such change likely to come about?

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[42] Department of Special Education, Oakland [California] Public Schools, Handbook for Teachers and Administrators of Programs for Educationally Handicapped Pupils 27 (1971).

[43] *Cf.* Feuerstein, *A Dynamic Approach to the Causation, Prevention, and Alleviation of Retarded Performance*, in Sociocultural Aspects of Mental Retardation 341 (H. Haywood ed. 1970).

[44] *See* K. Beery, Models for Mainstreaming (1971); New Directions in Special Education (R. Jones ed. 1970).

C. Special Education and the Law

In the viewpoint of some spokesmen, legal intervention may be the most effective means to secure change in the education of handicapped children. Psychologist Burton Blatt, for example, has stated: "More and more I comprehend the powerful positive influence that lawyers, if not laws themselves, now exert within my field of work . . . [Lawyers are] heroes, even now, to some of us today."[45] It is tempting, especially for lawyers, to view those who have initiated litigation and pressed for legislative change as the new heroes of the handicapped. But is that view correct? Before exploring the three case studies and the utility of due process in school classification, a brief description of current law reform efforts is in order.

Recent court decisions and legislative efforts have focused on several quite different aspects of the problem of educating handicapped children. Two decisions sought to secure for the severely handicapped more—and more appropriate—educational services. In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania,*[46] discussed in the first case study, a three-judge federal court ratified a consent agreement assuring all retarded children the right to publicly supported schooling "appropriate" to their needs. A similar result was reached in *Mills v. Board of Education,*[47] which extended the right to all students previously denied the benefits of an education. *Mills* and its aftermath are treated in the second case study.

Courts have also inquired into the overrepresentation of minority students in classes for the mildly handicapped. In *Larry P. v. Riles,*[47a] the district court concluded that the I.Q. tests which formed the basis for special placement were incapable of measuring the intellectual capacity of black students, and temporarily enjoined the use of such tests to assign black students to classes for the educable mentally retarded. Several consent decrees, designed to protect Mexican-American children from placement in programs for the retarded on the basis of their performance on English language tests, have reached similar results.[48]

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[45] Blatt, *The Legal Rights of the Mentally Retarded,* 23 SYR. L. REV. 991, 992-93 (1972).

[46] 343 F. Supp. 279 (E.D. Pa. 1972).

[47] 348 F. Supp. 866 (D.D.C. 1972).

[47a] 343 F. Supp. 1306 (N.D. Cal. 1972). *See generally* Murdock, *Civil Rights of the Mentally Retarded: Some Critical Issues,* 48 NOTRE DAME LAWYER 133 (1972).

[48] *See, e.g.,* Diana v. State Bd. of Educ., No. C-70-37 (N.D. Cal., July, , 1970) (consent decree); Guadalupe Organization v. Tempe Elementary School Dist. No. 3, No. 71-435 (D. Ariz., Jan. 24, 1972) (consent decree). The pleadings in

Judicial decisions have also sought to establish a rational procedural framework for making individual classification decisions. Both the *P.A.R.C.* and *Mills* decrees require that placement in classes for the handicapped be preceded by a formal due process hearing, if the parent opposes the proposed assignment. Legislation in several states, including Massachusetts, has imposed a similar framework.[49] The third case study, which focuses on California legislation, assesses the consequences of one such endeavor.

Each of these undertakings responds directly to one or more of the criticisms of present practice discussed in this Part. But to the extent that they fail sufficiently to take into account the organizational factors which appear to have prompted the emergence of the practice, their effect may be more hortatory than real. And each change is likely to impose new costs—diversions of time, money and energy—not fully anticipated by their proponents.[50]

The numerous organizational barriers to change discussed earlier require that the claims of the lawyer-reformer should be viewed skeptically. If the promise of law reform is fulfilled, it may well benefit exceptional children by imposing at least formal rationality on school decision-making practices, by providing heretofore excluded children with some educational services, and by provoking more publicity and greater appearance of change than have the efforts of other critics. But the ways in which both regular and special children should best be educated will depend ultimately on the resources at hand and upon the knowledge, good will, and organizational capability to use those resources wisely. Questions concerning the education of exceptional children have been with us for a long time. They are unlikely soon to receive definitive answers, and it is even more unlikely that such answers will come solely or even primarily from court decisions and legislation.

The following case studies do not attempt anything approaching a rigorous assessment of the impact of legal change on the behavior of school organizations. Rather, more simply, they explore recent developments in special education in three quite different places. Although they do not form a neatly coherent unit or a representative sample,

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these and similar cases are collected in Harvard University Center for Law & Education, Classification Materials (1973).

[49] See note 344 and text at notes 367-68 *infra*.

[50] > *[A]ny attempt to eliminate an existing social structure without providing adequate alternative structures for fulfilling the functions previously fulfilled by the abolished organization is doomed to failure . . . To seek social change without due recognition of the manifest and latent functions performed by the social organization undergoing change, is to indulge in social ritual rather than social engineering.*

R. Merton, Social Theory and Social Structure 81 (revised ed. 1957).

the case studies, chosen because of their apparent legal significance, do shed light on one another. Two of them, *P.A.R.C.* and *Mills*, focus on major court decisions which mandated both substantive and procedural changes in the education of the severely handicapped. The third discusses California's experience with legislation designed to secure certain procedural safeguards to those subject to placement in special classes.

Even preliminary assessment of the impact of legal reform on special education is a hazardous enterprise. The nature of impact clearly varies with the particular legal reform. Abolishing the practice of excluding severely handicapped students and insisting that they be provided with an appropriate or suitable education, as *P.A.R.C.* and *Mills* do, seems to require reordering of resource priorities and may also necessitate structural change in the school organization. Insisting upon procedural regularity, as *P.A.R.C.*, *Mills*, and the California legislation all do, requires the elaboration and defense of formal standards of placement; it makes it harder for the regular system's intuitive sense of who is exceptional to prevail. For the lawyer, procedural and substantive approaches may be linked, as they are in *P.A.R.C.* and *Mills*, but the consequences of each kind of change need to be disentangled if they are to be understood.

The effect of a given reform may well vary from place to place. Parental pressure for change may be strong (as in Pennsylvania) or weak (as in Washington), sporadic or sustained; the school's (or school system's) willingness to change will vary. In some places, a particular legal mandate may be seized upon by reformers within the school structure.

To talk about the effect of "law" quite deliberately merges judicial and legislative efforts. Historically, the two have been distinguished, and quite properly.[51] The justification for judicial and legislative intervention differ. Legislatures exercise direct command over resources and the option repeatedly to review earlier actions, two powers unavailable to courts. Certain decisions may also acquire greater political legitimacy if made by legislatures. Yet from the school system's point of view, both courts and legislatures are outsiders and each may seem equally unaware of the real problems which schools encounter.

Finally, what one might mean by "effect" is unclear. One way to assess what has happened is to consider whether the letter of the legal mandate has been complied with: Have the districts attempted to locate all previously excluded students? Do California school districts formally review each recommended special placement? But those who sought change also had broader goals in mind: Has Washington, D.C. taken seriously its obligation to develop "suitable" placements for all students and not assumed that existing programs were necessarily appropriate? Are California placement decisions now made with collective thoughtfulness, not merely perfunctorily? Compliance with both the letter and the spirit of legal reform merit consideration.

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[51] For discussions of judicial impact see S. WASBY, THE IMPACT OF THE UNITED STATES SUPREME COURT: SOME PERSPECTIVES (1970); THE IMPACT OF SUPREME COURT DECISIONS (T. Becker ed. 1973).

The conclusions of the case studies should be appraised cautiously. They were conducted over a period of several months, long enough only to begin to understand what the difficult questions really are. The Pennsylvania and Washington, D.C. studies analyze the period immediately following court decisions and thus cannot identify long-term and possibly more significant effects. At points, important factual material proved unavailable. Yet the case studies do provide some insight into the relationship between organizational attributes and legally mandated change. They also give some structure to the speculations in Part III concerning the utility of procedure as a means of improving existing classification decision-making.

II

LEGAL MANDATES AND ORGANIZATIONAL CHANGE: THREE CASE STUDIES

A. *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*[52]

For many years Pennsylvania has required that all children between the ages of eight and 17 attend school.[53] However, any child judged by a school psychologist to be "unable to profit from further school attandance"[54] or "ineducable and untrainable"[55] was excused —or, more accurately, excluded—from the public schools. In operation, these provisions doomed severely retarded children to institutions providing little, if any, education,[56] or to the backrooms or attics of their homes.

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[52] 343 F. Supp. 279 (E.D. Pa. 1972).

Field research for this section was conducted between November 1972 and July 1973. The researchers interviewed state education officers, parent organization officials, the court-appointed Masters, administrators, school psychologists and special education personnel in six districts. Where the source of information is not indicated, the information could not have been used if the source had not remained confidential.

The authors are currently undertaking a three-year assignment of the effects of the Pennsylvania decree at the state, school district and local levels.

The final phase of research for this section was partially supported by grant NE-G-00-3-0192 from the National Institute of Education.

[53] PA. STAT. ANN. ch. 24, § 13-1326 (1962).

[54] *Id.* § 13-1330 (Supp. 1973).

[55] *Id.* § 13-1375 (Supp. 1973).

[56] Pennsylvania Ass'n for Retarded Children v. Commonwealth, 343 F. Supp. 279

In 1971, the Pennsylvania Association for Retarded Children (PARC), long involved in problems of the retarded, filed suit challenging the constitutionality of excluding severely retarded children from school. While PARC had been active in a host of issues concerning the retarded, litigation was a novel approach for the organization. Two years before the suit was filed, Thomas K. Gilhool, the the Philadelphia attorney who ultimately argued the case, first suggested the tactic: "Litigation is one role among many, whereby the Association may encourage and expedite the kind of change it seeks in the care and treatment of retarded children."[57]

P.A.R.C. was a seminal suit. It asserted that Pennsylvania's failure to offer any education to severely retarded children represented a denial of equal protection, and that assignment of youngsters to programs for the retarded, unless preceded by notice and the opportunity for a hearing, denied them due process of law. While both claims were legally novel, the three-judge federal district court never had to rule on the merits of the constitutional claims. In October 1971, after several hearings before the court, the suit was tentatively settled. The settlement was ratified in May 1972.[58]

P.A.R.C. mandates sweeping changes in the education of the retarded. It requires that the state locate and identify all excluded youngsters; that local districts undertake thorough medical and psychological evaluation of previously excluded children, of children presently in classes for the retarded, and of children recommended for such classes;[59] and that all children in special classes automatically be reevaluated every two years (the old statute called for reevaluation every three years or every year on parental demand) and any time a change in childrens' programs is contemplated.[60] Finally, *P.A.R.C.* required that all retarded children be placed in a "free public program of education and training appropriate to the child's capacity."[61] While the consent agreement did not specifically define appropriateness, it did declare that regular class placement was "preferable" to placement in any

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(E.D. Pa. 1972) [hereinafter cited as P.A.R.C.]. Of the 4,519 children of school age in Pennsylvania institutions, at the time of the suit, 100 were in a full education and training program, 1,700 were in partial but inadequate programs, and 3,259 received no education program. *Id.* at 296.

[57] L. Lippman and I. Goldberg, Right to Education: An Anatomy of the Pennsylvania Case and its Implications for Children 20 (1973) [hereinafter cited as Right to Education].

[58] Because the court was asked only to ratify the consent decree it did not reach the merits of the constitutional claims. Rather, the court concluded that they were constitutionally "colorable." 343 F. Supp. at 295, 297.

[59] *Id.* at 315.

[60] *Id.* at 303, 315.

[61] *Id.* at 285.

other kind of program.[62] Parents dissatisfied with the school district's placement recommendation were given the right to a hearing before an impartial hearing officer.[63] To oversee the decision, the court appointed two masters: Dennis Haggerty, an attorney in Philadelphia and a former PARC officer, and Doctor Herbert Goldstein, a professor of Special Education at Yeshiva University in New York City.[64] The *P.A.R.C.* decree was headline news across the country. Immediately after the tentative consent agreement was announced, Governor Milton J. Shapp, a progressive Democrat strongly committed to the enterprise, appeared at a press conference with PARC officials to endorse it. He also made numerous spot announcements on television and radio to explain the scope of the decision. The *New York Times* called the decision "a historic step in an area that suffered from public and professional neglect."[65] The National Association for Retarded Children and the Council for Exceptional Children goaded their membership to imitation. A book analyzing the significance of the case was rushed into print.[66]

1. Implementation of P.A.R.C.

Once the decree was finally approved on May 5, 1972, Governor Shapp created a Right to Education Office, federally funded on a one-year renewable basis, to oversee the implementation of the consent agreement. But even with the help of a statewide agency, implementing *P.A.R.C.* has proved extremely difficult.[67] It has demanded an enormous expenditure of effort and dollars to identify, evaluate, and place previously excluded youngsters and to reevaluate the retarded children presently in schools. The indeterminate size of the class (estimates ranged between 70,000 and 100,000)[68] as well as lack of agreement as to the characteristics of the excluded group compounded the problem. Also, as Robert Burt has noted: "[T]he federal court did not resolve a dispute between contesting parties, but instead ratified an agreement between advocates for children services and professional service agencies to raid state treasuries for greater funds on behalf of their shared clientele."[69] But at the time of the consent agreement no one knew just what additional resources were needed, where they should be located and who should assume responsibility for administering them.

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[62] *Id.* at 307.

[63] *Id.* at 303-05. An indeterminate group of children residing in state schools and hospitals were left to the care of the Department of Public Welfare, which also was charged with providing "appropriate" education under the supervision of the Department of Education. *Id.* at 312-13.

[64] *Id.* at 314.

[65] N.Y. Times, Oct. 13, 1971, at 44, col. 1.

[66] RIGHT TO EDUCATION, *supra* note 57.

[67] Thomas K. Gilhool, PARC's lawyer, was well aware of this fact. Shortly after the decree, he "quickly warned his clients that court decisions are no more self-enforcing than are statutes. A court order will require follow-up by interested parties." RIGHT TO EDUCATION, *supra* note 57, at 46.

[68] During the identification period, estimates of the size of both the previously excluded group and the entire class of children fluctuated enormously. PARC literature estimated that there were 100,000 retarded children in the state. The Sparc (Philadelphia Association for Retarded Children Newsletter, Special Childhood Issue) (Spring, 1973). Since the best State Department of Education estimates put the number of retarded children in school at 50,000, PARC expected to find as many as 50,000 excluded children. In January, 1973, Tom Gilhool stated that the best estimate

a. *Identification*

The consent decree demanded that first priority be given to finding excluded youngsters. The Right to Education Office sought out children in ingenious ways. Through *COMPILE (Commonwealth Plan for Identification, Location and Evaluation of Mentally Retarded Children)*,[70] it arranged to place notices in all state liquor store packages and welfare checks, send letters home with all school children, publish regular announcements in at least one local newspaper in each area of the state, and establish a toll-free phone service through which anyone might report the existence of an excluded child. All school districts as well as all state agencies dealing with school-age children were required to search their records for youngsters who were not enrolled in some educational program. To ascertain the accuracy of the identification process, *COMPILE* called for a door-to-door census in three representative school districts (urban, suburban and rural). Simultaneously, PARC itself organized a parallel undertaking, "Operation Childhunt," turning over to the Right to Education Office the names that it uncovered.[71]

The identification process generally went well, but not without hitches. The most noteworthy noncompliance occurred in Philadelphia. School administrators there claimed to have completed their en-

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was 25,000. [Gilhool, *The Uses of Litigation: The Right of Retarded Children to a Free Public Education*, 50 PEABODY J. OF EDUC. 123 (1973).] Such figures were based on school census data as well as on projections based on an expectation that approximately 5 percent of the population falls, by statistical definition, below the state mandated criterion (I.Q. 75) for admission to special education.

[69] Burt, Beyond the Right to Treatment: Strategies for Judicial Action to Aid the Retarded (report prepared for the President's Commission on Mental Retardation and the Project on the Classification of Exceptional Children, Vanderbilt University).

[70] PA. DEP'TS OF EDUC. AND PUB. WELFARE, COMPILE: COMMONWEALTH PLAN FOR IDENTIFICATION, LOCATION, AND EVALUATION OF MENTALLY RETARDED CHILDREN, 1972 [hereinafter cited as COMPILE].

[71] PARC developed a list of approximately 20,000 pupils. Most of these overlapped with those found through COMPILE. Interview with Marliene Smoker, Assistant Director of PARC, in Harrisburg, Pa., June 28, 1973.

tire search in one week, prior to the development of *COMPILE*.[72] In a lengthy rebuttal the Masters found Philadelphia in wilful noncompliance, determined that Philadelphia officials had no intention of making a serious effort to comply, and asked the court to order them to do so.[73] Their strong stand led to several meetings among the litigants and, in December 1972, to the submission of a plan acceptible to all parties. By February 1973, a full year after the deadline, the Masters were finally satisfied that Philadelphia was taking positive steps toward compliance.[74]

Only slightly less serious were the problems of implementing *COMPILE* in the state schools and hospitals. By August 1972—seven months after the judicially established deadline for initial screening had passed—the State Department of Public Welfare (DPW) had not provided the Right to Education Office with any data about institutionalized children. The Masters attributed the delay to the problems of inter-agency cooperation and begged the court's indulgence.[75] By November 1972, the Masters had grown impatient. Although they still had no accurate data, they estimated that at least thirty percent of the children in state schools and hospitals were receiving no education, while the remaining seventy percent were receiving only one to five hours each week. The Masters asked the court to order the Department of Public Welfare to complete *COMPILE* by January 2, 1973.[76] Before the court acted, the Department of Public Welfare met the deadline, although as late as June 1973, 200 children in Allentown State Hospital still had not been screened.[77]

There is general agreement among the interested parties that the vast majority of previously excluded children have been found. The rural and suburban census turned up less than a dozen children who had been missed by Childhunt and *COMPILE*.[78] By April 25, 1973, *COMPILE* had identified approximately 19,000 children as possibly retarded. Of these, about 4,000 were found not to be retarded, and of the remaining 15,000, only 7,398 were excluded from any program of education—far fewer than either PARC or the Commonwealth had anticipated. Of the 7,398, 2,571 were severely and profoundly retarded and had never been in any program; another 1,227 were in private licensed facilities providing interim care as they awaited admission to state schools. Finally, 3,600 were in state schools and hospitals.[79]

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[72] Stipulation of Facts Concerning Compliance by Co-defendant School District of Philadelphia (filed Aug. 1, 1972), *P.A.R.C.*, 343 F. Supp. 279 (E.D. Pa. 1972).

[73] First and Interim Report of the Masters at 69 (filed Aug. 2, 1973), *P.A.R.C.*, 343 F. Supp. 279 (E.D. Pa. 1972) [hereinafter cited as First Report].

[74] Third and Interim Report of the Masters at 2 (filed Mar. 9, 1973), *P.A.R.C.*, 343 F. Supp. 279 (E.D. Pa. 1972) [hereinafter cited as Third Report].

[75] First Report, *supra* note 73, at 2-3.

[76] Second and Interim Report of the Masters at 2 (filed Nov. 19, 1972), P.A.R.C., 343 F. Supp. 279 (E.D. Pa. 1972) [hereinafter referred to as Second Report].

[77] Presentation of Gary Makuch, Dep't of Public Welfare representative, Masters Hearing, June 12, 1973. [Transcripts of the Masters Hearings on this and other dates cited below are on file at the Right to Education Office (REO) in Harrisburg, Pa., and with Peter Kuriloff.] The Commonwealth of Pennsylvania distinguishes between "state schools and hospitals," which are primarily for the retarded, and state hospitals, which are primarily for the mentally ill. Nevertheless, COMPILE calls for the identification of all children who possibly might be retarded. The process by which these leads are then assessed to determine which are false and which merit further extensive evaluation is referred to as "screening." Since the operational criteria for admission to state institutions has never been especially well related to diagnosis, the 200 children in Allentown State Hospital should have been screened.

These figures indicate the success of the identification process—a success made possible by the commitment of most of Pennsylvania's public officials, the prodding of the Masters, the energetic program of PARC and, perhaps, by the fact that the goal was concrete and easily understood.

b. Evaluation

The *P.A.R.C.* decree mandated that all excluded children be evaluated and appropriately placed by September 1, 1972, a timetable which in many districts proved infeasible. Over 60,000 children had to be evaluated or reevaluated by procedures which were much more complicated and elaborate than they had been prior to *P.A.R.C.* It now takes approximately four-and-one-half to five hours for the evaluation of each child. A conservative estimate thus suggests that each Pennsylvania school psychologist spent between 350 and 400 hours simply doing the assessments required by *COMPILE*.[80] Overwhelmed by these new demands, they often found classroom space for children first and evaluated them when time permitted. Children previously assigned to classes for the retarded remained there until reassessments could be made.[81] By January 1973, most of the evaluations had been done in all areas of the state except Philadelphia. Most districts had also started the reevaluations. Philadelphia, openly resistant through 1972 and then plagued by strikes and fiscal crises, did not begin to complete its obligations under *COMPILE* until the spring of 1973.

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[78] The urban census was the subject of a political battle between the State Department of Education and the Pittsburgh School Board and did not get underway until June, 1973. Interview of Peter Kuriloff with Joseph Lantzer, Director of REO, in Harrisburg, Pa., May 8, 1973. *See also* Masters Hearings, Dec. 12, 1972, and Jan. 16, 1973.

[79] Telephone interview of Peter Kuriloff with William Benson, Area coordinator of REO, Apr. 28, 1973. The figures are derived from a computer printout data sheet on file in the REO office and represent the most accurate picture available as of April 25, 1973. In this regard, it is interesting that the office was not able to break down the data further so as to show how many of the previously excluded children are now classified as educable, trainable, profound, etc. It is perhaps indicative of the organizational obstacles to successful *P.A.R.C.* implementation that the state office in charge of overseeing it has not developed, by mid-1973, information vital to that enterprise.

[80] These estimates were arrived at as follows: *P.A.R.C.* required that elaborate reevaluations be carried out on at least half of the 51,000 retarded children in school. It also required that the 10,000 new retarded children (including 7,398 previously excluded children) be evaluated. Interviews conducted by REO Regional Representative Jerry Hearsum with 47 of the approximately 400 psychologists in the state educa-

In an effort to avoid the all-too-common, simplistic diagnoses (which often said little more than "Janet is a cute, lovable, but slow child"), *COMPILE* requested that evaluations include information concerning a wide variety of behavorial characteristics. It called for psychological testing using the "most valid and reliable instruments generally recognized by the profession,"[82] a review of the child's educational status (if he was in school), an inquiry into the child's family history to determine how well he coped outside of school, and a medical examination.

Such a multi-faceted inquiry was essential to develop what *COMPILE* called "a continuing diagnostic prescriptive and psychoeducational plan."[83] But because it might involve a physician, a psychiatrist, a neurologist, a public health nurse, a social worker, and a speech therapist, among others, the evaluation was time-consuming, and required extensive managerial skill by the coordinating school psychologist. Its implementation depended on the willingness of the school organization to make available the resources necessary to accomplish the evaluation and to make use of the evaluation in devising program placements.

The ability of the individual psychologist undertaking the evaluation was also of critical importance. The school psychologist selects the test instruments, determines who will take part in assessing the child's difficulties, and decides whether to perform all of the recom-

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tion system, representing 26 intermediate units, indicate that approximately 4.5 hours were required to carry out each assessment. Thus, $(25{,}500 + 10{,}000 \times 4.5) \div 400 = 399.4$ hours per school psychologist. Presentation of Jerry Hearsum, REO Regional Representative, Masters Hearing, June 12, 1973.

[81] These findings, and those presented *infra* on the impact of *PARC* at the district level, are based on Peter Kuriloff's interviews with administrators, school psychologists, and teachers in Philadelphia and five of its suburbs. (Notes on file with Peter Kuriloff.) As such, they only are indicative of what is happening in the most populous area of the state and only are suggestive of what may be going on in other areas. Getting the latter data was beyond the resources of this inquiry, in that it would have required extensive interview and survey techniques in a representative sample of districts. Neither was it available from the transcripts of the Masters Hearings since these tended to focus on the broader problems of implementation.

[82] COMPILE, *supra* note 70, at 8.

[83] *Id.* at 9.

mended evaluative procedures. When conducted by a harassed psychologist—and after *P.A.R.C.* almost all Pennsylvania school psychologists were harassed—the ideal evaluation sometimes gave way to hasty processing. In districts with large numbers of previously excluded children, time, personnel, and resources were too limited to translate *COMPILE's* demands for prescriptive evaluation into effective practice.

Other factors have impaired the quality of evaluations. While *P.A.R.C.* requires that all children placed in programs for the retarded be reevaluated much more thoroughly than previously, the demands of assessing children who had never been evaluated for public school placement encouraged routine affirmation of prior decisions. In one probably not atypical district a psychologist filled out reevaluation forms by copying information from old evaluations. This practice is particularly questionable in light of research findings indicating that substantial numbers of children in the five-county, greater-Philadelphia area have in fact been misclassified as retarded.[84]

Organizational pressures also played a role in distorting the quality of evaluation. In districts anxious to maintain high enrollments in classes for the retarded—and thus maintain their levels of state aid—[85] psychologists were pressured to test children with instruments such as the Stanford-Binet which characteristically yield lower scores than other I.Q. tests.[86] One director of pupil personnel services expressed the hope that such an approach would "keep these children where they are and avoid stirring up their parents."

But even in the vast majority of cases where the psychologists performed in a professional manner, they have seriously criticized the 14-page, "Commonwealth Right-to-Education Evaluation Form"[87] they are required to fill out in addition to any reports they write based on the tests they administer. They have found the scales contained in the form inappropriate for profoundly retarded children—the very children most likely to have been excluded. Many psychologists believe that the standards for evaluation themselves are not adequate. More important, the standards do not protect against evaluation practices which reflect the schools' limited resources and organizational pressures.

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[84] *See* Garrison & Hammill, *Who Are the Retarded?*, 38 EXCEPTIONAL CHILDREN 13 (1971).

[85] School districts in Pennsylvania are required to spend an amount equal to their average yearly per-pupil expenditure on their handicapped children. The difference between that figure and what it actually costs to educate them is borne by the state. Dep't of Education, Commonwealth of Pa., Harrisburg, Pa., Supplement Three: School Laws of Pennsylvania (Cumulative Annual Supplement for use in 1973) § 2508, at 18-19.

[86] Clever psychologists can play this game too. One director of special education described how she and her fellow psychologists used to use instruments which produced low scores whenever they had a child who desperately needed special placement and the only ones available were EMR and TMR classes. Conversely, she stated that now most psychologists she knows refuse to label a child retarded on the basis of one score from any instrument. Interview of Peter Kuriloff with Elizabeth Long, Director of Special Education for William Penn School Dist., Yeadon, Pa., in Yeadon, Apr. 9, 1973.

[87] COMMONWEALTH OF PA., RIGHT TO EDUCATION OFFICE, RIGHT-TO-EDUCATION EVALUATION FORM (DEBE-1051) May, 1972.

c. "*Appropriate*" *Placement*

The *P.A.R.C.* consent agreement required Pennsylvania to submit to the Masters a plan specifying

> the range of programs of education and training, their kind and number necessary to provide an appropriate program of education and training to all mentally retarded children, where they shall be conducted, arrangements for their financing, and, if additional teachers are found to be necessary, recruitment, hiring and training arrangements.[88]

COMPET (the Commonwealth Plan to Educate and Train Mentally Retarded Children),[89] which the state published in the late Summer of 1972, does not meet the consent agreement's requirements. As one PARC official pointed out, it does not specify a full range of programs; the kind and number of classes; the location of the classes; the arrangements for funding them; the standards, methods of recruiting, and training of teachers; and the standards for the curricula of various programs.[90] It is, instead, what one critic called a "cook book version of a curriculum guide,"[91] which discusses teaching strategies for a wide range of retarded children.[92] For the state to produce a curriculum for exceptional children before figuring out where the curriculum might be used is to put the pedogogical cart before the organizational horse. As James Gallagher, an expert in the field of special education, commented:

> An extensive curriculum such as presented here [in *COMPET*] is useful only after one has settled where and under what circumstances the child is going to receive that curriculum. . . . The crucial elements of planning, namely, precisely what is going to be done to whom under what set of circumstances, still remain something

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[88] 343 F. Supp. at 315.

[89] PA. DEP'TS OF EDUC. AND PUB. WELFARE, COMPET: COMMONWEALTH PLAN FOR EDUCATION AND TRAINING OF MENTALLY RETARDED CHILDREN (1972) [hereinafter cited as COMPET].

[90] *Id.* at 166-67.

[91] Letter from John A. Abbruzzese, Jr., to Dr. William F. Ortman, Director, Bureau of Special Education, Aug. 30, 1972, in *id.* at 176.

[92] *COMPET*, *passim*, discusses everything from teaching a child to raise his head in a coordinated manner to developing good judgment and reasoning at common sense situations.

of a mystery. Even more so are budget estimates of what additional resources will be needed to carry out these intentions.[93]

While *COMPET*'s shortcomings may be attributed in part to the three-month completion deadline imposed by court orders, restricting the plan to a narrow discussion of curricula may have been designed to avoid the ticklish "appropriate" education-cost/manpower trade-off problems with which the consent decree itself had not reckoned.[94]

COMPET ignores the most basic implementation question: will an "appropriate" education be provided for all retarded Pennsylvania children? To insist that each child receive "appropriate" instruction threatens the organizational status quo. Special educators and program administrators often handle this threat by denying it, giving rise to claims frequently heard in field interviews to the effect that *P.A.R.C.* has had little impact "because we've been doing it all along anyway."[95] Yet "appropriate" does not necessarily mean more of the same; organizational rigidity is not a justification for lack of educational alternatives. In order to understand the impact of such a standard on existing school practices, a brief description of Pennsylvania's pre-*P.A.R.C.* special education programs is needed.

In Pennsylvania (and many other states) the multiplication of special programs has been taken as a sign of pedagogical progress. State funds pay for most of these programs, including classes for the educable and trainable mentally retarded, the physically handicapped, the brain injured, and the socially and emotionally maladjusted.[96] Special educators generally regard such programs as exhausting the range of "appropriate" placements and view their task as determining which is best suited to a given child. The categories themselves usually remain unquestioned, even in those districts which dramatically increased their special education budgets in order to accommodate previously excluded children.[97]

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[93] Letter from James J. Gallagher, Director, Frank Porter Graham Child Development Center, University of North Carolina to Peter P. Polloni, Executive Director, PARC, Aug. 25, 1972, in COMPET, *supra* note 89, at 168.

[94] Second Report, *supra* note 76. The Masters recognized that COMPET is a tentative document to be revised in light of the 1972-73 school year experiences. In the spring of 1973, the Masters appointed an evaluation team to review COMPET and to recommend appropriate revisions.

[95] In the field interviews this was heard several times, once from a highly respected associate superintendent of schools whose area of responsibility included special education.

[96] *See* PA. STAT. ANN. ch. 24, §§ 13-1373, 25-2509 to -2509.1 (Supp. 1973).

[97] The Delaware County Intermediate Unit adopted a special education budget for 1972-73 of $3.3 million, an increase of 28 percent over the previous year. Because PARC expenditures do not have their own line in the budget, it was not possible to determine how much of this was spent on expanding existing programs or developing new ones. Telephone interview of Peter Kuriloff with Dr. Laura W. Murphy, Director of Special Education, Delaware County Intermediate Unit, Mar. 27, 1973.

P.A.R.C. did not necessarily endorse the status quo as the preferred solution, but neither the decree nor *COMPET* provided alternatives. In some districts the short-term outcome appears to have been noncompliance or foot-dragging resistance. Philadelphia has barely begun to institute *COMPET*. When the district failed to heed the order of the Masters to do so in the summer of 1972, PARC itself went back to the court in late August. The court ordered Philadelphia to comply by September 1—an admittedly unrealistic demand. In October PARC went to court again, and this time the school district was ordered to prepare an acceptable plan for implementation by January 2, 1973.[98] A political dispute in Pittsburgh led the city to refuse to undertake a census of school-age children. The district reopened abandoned schoolhouses for previously excluded children. As one PARC official commented, "The city went out of its way to treat these students as second class citizens." Pittsburgh also tried to use its school disciplinary code as a vehicle for continuing the exclusion of two children it had evaluated under *COMPILE*. This situation was resolved by the Masters, who got the children readmitted through arbitration and then sought an Attorney General's Opinion which forbade all school districts from using disciplinary codes to exclude retarded children.[99]

A more complicated issue of compliance arose in regard to the provision of appropriate education to children in state schools and hospitals. Under the terms of the consent agreement, the educational program was to be provided by the Department of Public Welfare under the supervision of the Department of Education. This arrangement created serious organizational and financial problems. The Department of Public Welfare received no additional money to cover the initial costs of the program. Only by taking funds away from other programs was the Department able to scrape up approximately a half-million dollars for this purpose. Because state facilities were already overcrowded, understaffed, and underfinanced, there was little leeway for creative implementation. By February 1973, however, the Department had agreed to make 1,950 new staff positions available,[100] of which 1,550 were to be used to provide education in current state schools and hospitals, and 250 to staff a soon-to-be-opened institution.[101] These positions were to paid for out of a proposed—but as of yet, not obtained—Department of Public Welfare budget increase of 47 million dollars.[102]

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[98] Order (filed June 15, 1973), *P.A.R.C.*, 343 F. Supp. 279 (E.D. Pa. 1972).

[99] First Report, *supra* note 73, at 2.

[100] Third Report, *supra* note 74.

[101] *Id.*

[102] Philadelphia Inquirer, Feb. 13, 1973, at 6-C, col. 1. This proposal en-

A more subtle but still serious organizational difficulty was created by an administratively sensible agreement, worked out between the state Departments of Public Welfare and Education, that programs sponsored by the Department of Public Welfare were to be supervised by the Department of Education. For years state school and hospital employees had been caring for children the schools had rejected as ineducable. This widely held notion of ineducability had led the Department of Public Welfare to hire unskilled paraprofessionals to provide care for the "hopeless cases" residing in state schools and hospitals.[103] The agreement meant that people who were only marginally competent suddenly found themselves considered educators under the supervision of schools which had only recently rejected the children to be educated, a situation which created antagonisms.[104] The need for the Department of Public Welfare to develop expertise already possessed by the educational establishment made the gap between the professional competence of educators and hospital workers more explicit, and tensions further increased.[105] At the prodding of the Masters, representatives of the schools and the state hospitals began a series of meetings in spring of 1973 which resulted in an agreement in principle to divide responsibility for providing education to the hospitalized children.[106] Under the agreement, the Department of Public Welfare provides funds for the programs which the Department of Education staffs and runs.[107]

The relationship between the Departments of Education and Welfare also became a problem in securing compliance with *P.A.R.C.* standards by private licensed facilities and private licensed schools. Private licensed facilities operate under license from the Department of Public Welfare to provide interim care for children waiting to get into state hospitals. The standards for licensing are minimal, involving

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countered the typical legislative difficulty that funds for retarded children (and other Department of Public Welfare programs) often are the first trimmed in a search for fiscal responsibility. Cuts forced the reduction of these positions and have prevented the opening of the new state school.

[103] One authority believes that special education has operated for years under an "inverse law" such that the more handicapped the child, the less competence the teacher who worked with him was thought to need. Interview of Peter Kuriloff with Dr. Herbert Goldstein, in Philadelphia, Pa., June 11, 1973.

[104] Interview of Peter Kuriloff with Dennis Haggerty, P.A.R.C. Master, in Philadelphia, Pa., May 8, 1973.

[105] Presentation of Gary Makuch, Dep't of Public Welfare representative, Masters Hearing, July 10, 1973 (progress report on the transfer of responsibility for the education of children in state schools and hospitals from the Department of Public Welfare to the Department of Education).

[106] Interview, *supra* note 104.

[107] Interview of Peter Kuriloff with Gary Makuch of the Dep't of Public Welfare, in Erie, Pa., July 10, 1973.

primarily safety and health criteria. The facilities are eligible to receive subsidies from the Department of Public Welfare but not the Department of Education. Private licensed schools operate under the aegis of the Department of Education, which requires that they meet only the most minimal educational standards.

These schools are eligible for state aid when they provide particular children with services they cannot get through their local school system or intermediate unit, and they are approved by the Department of Education.[108] Under an agreement between the Departments of Education and Welfare, *P.A.R.C.* implementation in both types of institutions was to be supervised by the Department of Education, with the Department of Welfare continuing to make its financial contributions toward the maintenance of children in private licensed facilities.[109] The difficulties with this arrangement became clear at Allegheny Valley School, a Pittsburgh-area institution which is both a state licensed facility and a private licensed school catering to severely and profoundly retarded children. Because of the school's apparent failure to carry out *COMPILE*, the Masters ordered the Pittsburgh school system to evaluate both the school and its children.[110] At the July 10, 1973 Masters Hearing, Dr. Ruth Scott, the Director of Programs for Exceptional Children in the Pittsburgh school district, reported that her evaluation team had found the school "totally unacceptable" under state public education standards for special education classes. The team also found that the school was misleading its clients by falsely representing many of its staff members to be various kinds of professionals. According to Dr. Scott, the administration of Allegheny Valley School, when confronted with these findings, did not agree to change its practices. Instead, it persuaded parents to fight for the school by demanding individual due process hearings for each child on the ground that the school district cannot provide for the child's medical needs. The school's physician is willing to back these claims, and the parents have threatened to sue should their children be required to return to the public school.[111]

Deputy Attorney General Lawrence Selkowitz, who handles

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[108] Interview, *supra* note 105; Presentation of Dr. Ruth Scott, Masters Hearing, July 10, 1973.

[109] STATE DEP'T OF EDUC., SCHOOL ADMINISTRATORS MEMO 535 (Aug. 9, 1972). Despite this agreement, the status of children in the state schools and hospitals remained so ambiguous that the Masters found it necessary to order both departments to make sure the children were evaluated and given appropriate instruction. Second Report, *supra* note 76, at 2-3.

[110] Presentation of Jack Hagele, Masters Hearing, July 10, 1973.

[111] Dr. Ruth Scott, Report on the Allegheny Valley School, July 10, 1973 (on file at REO in Harrisburg, Pa.).

P.A.R.C. matters, is pessimistic about adequately regulating either private licensed facilities or private licensed schools without changing the licensing standards.[112] This is precisely what PARC wanted when it asked through its lawyer, Jack Hagele, that the standards resulting from the consent decree be incorporated into both agencies' licensing policy.[113] Since other private schools, private licensed facilities, and private schools for the retarded exist to serve a variety of needs not being met by the state, a move in this direction could engender strong political resistance.

PARC officials and state administrators suspect that some rural districts have not provided any educational placements for handicapped children. Their attention has been so focused on monitoring the quantitative aspects of *COMPILE* and *COMPET*, however, that only the most flagrant violations have been brought to the attention of the Masters. For example, when *COMPILE* was first published, an ambiguity in its wording enabled several administrators from districts with very limited resources to interpret it as permitting schools to exclude profoundly retarded, multiply-handicapped youngsters, an interpretation in direct violation of both the letter and spirit of the consent agreement. While this kind of problem is easily clarified,[114] only local consumer groups such as PARC can guarantee that such episodes do not recur. A more difficult problem arises when local school boards directly resist implementation in the name of politically popular economy drives. Unless careful monitoring takes place, districts without strong consumer groups are likely to neglect or evade the agreement when it suits them.

Even when state agencies, PARC officials, and local special educators have worked together, they have encountered resistance from other educators. The problems created by the manner in which "normal" people perceive retarded children illustrate the difficulties of trying to alter the marginal status of these children through judicial reform. For example, at a spring 1973 Masters Hearing, the parent of a retarded child complained that the local educators in charge of vocational/technical training reject retarded children because "they aren't ready." When Master Goldstein suggested that the local PARC chapter or local task force[115] fight for a modified program to fit the children, the parent replied: "They tell you to go screw yourself."[116] This attitude is held by many vocational educators. The Bureau of Vocational Education has stated that no child with an I.Q. less than 105 would be accepted in vocational/technical schools. Many vocational schools have not even applied for federal funding available to provide handicapped children with vocational training.[117] A few programs have been developed to deal with the vocational/technical problem. Intermediate Unit 19[118] has begun a pre-vocational/technical work-study program for 20 twelve to fifteen-year-olds, in order to get them ready for (and make them acceptable to) the regular vocational program. The project may be laudable, but the fact that it is housed in a previously-closed school suggests both its marginal status and the tenacity of conventional attitudes.[119]

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[112] Presentation of Larry Selkowitz, Masters Hearing, July 10, 1973.

[113] Presentation of Jack Hagele, Masters Hearing, July 10, 1973.

[114] The Masters issued a clarification in their First Report, *supra* note 73, at 3-4.

[115] Local task forces were established by COMPILE and were believed by PARC officials to hold the key to monitoring implementation at the local level. See text accompanying notes 131-34 *infra*.

The implementation picture is not wholly bleak. In innovative districts, new educational offerings have appeared, and there is evidence of increased interdistrict cooperation. In one Philadelphia-area district where prior to *P.A.R.C.* there were only classes for educable and trainable retardates, there are now two resource rooms to provide special support for otherwise mainstreamed educable elementary children, a work-study program for senior high school educables, itinerant teachers for the homebound, and a program for multiply handicapped children at a neighboring private institution. There has been a similar burgeoning of programs in two of the other four districts studied. Reports from other areas of the state suggest that these developments may not be uncommon. Even in less innovative districts, talented and strong-willed special educators have occasionally been able to use *P.A.R.C.* as a lever to force the introduction of new education opportunities. In one such system, a fifteen-year-old who had been misclassified by the school spent his entire school career in classes for the retarded. The psychologist, the student and his parent all felt that he would be hopelessly behind if he were placed directly into the tenth grade, but the district was reluctant to invent another alternative. The psychologist worked with the boy and his parents and developed a sensible program involving a day divided between regular classwork and vocational preparation. With the psychologist's active support, the parents then used a due process hearing to persuade the district to provide such a program for their son. The *P.A.R.C.* agreement also seems to have fostered a movement toward greater regional cooperation to solve problems relating to transportation, supervision of special education classes, and coordination of services among districts.[120]

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[116] Masters Hearing, June 12, 1973.

[117] Presentation of Joseph Lantzer, Masters Hearing, June 12, 1973.

[118] Pennsylvania's 569 school districts are grouped into 29 intermediate units which disburse state revenue and provide resources and services that single districts by themselves often could not afford. Their chief executive officers are called Intermediate Unit Directors.

[119] Presentation of I.U. 19 representative, Masters Hearing, June 12, 1973.

2. *Monitoring Mechanisms*

Most of Pennsylvania's school districts, while in compliance with the letter of the consent agreement, have not fully reckoned with the organizational implications of implementing a decree which requires the public education of a wholly new class of students. In the absence of some prodding by PARC, the court-appointed Master, or the State Department of Education that reckoning and reexamination is unlikely to take place. Anticipating this, the court and PARC officials, in cooperation with the state agencies, developed four monitoring mechanisms: the Masters, the Right to Education Office, the local task forces, and the due process hearings.

a. The Masters

The court appointed two Masters to oversee implementation of the decree. Their responsibilities were broad: they were charged with approving state proposals for the identification, evaluation, and placement of children who had been excluded from school; they heard complaints concerning nonimplementation; and they could order people to testify at hearings. They could press for preliminary judicial directives and for contempt action against officials who do not comply with the decree.[121]

During their first year the Masters operated as "guideline setters and dispute adjudicators," sometimes assuming the role of mediators, sometimes acting more forcefully as arbitrators.[122] When the court extended the term of the Masters in October 1972 to October 1973, it required them to submit monthly reports and to attach any proposed orders which they deemed necessary to remedy noncompliance.[123] This seecmed to indicate the court's willingness to be more explicit in its support of the Masters. However, for several reasons, the Masters' authority has not been fully effective. First, the court has not responded to Masters' requests. After receiving their new mandate, the Masters filed two monthly reports. In these, they suggested that the court issue four orders pertaining to the failure of the Department of Public Welfare to carry out *COMPILE* and *COMPET*, the failure of Pittsburgh to carry out its door-to-door census, the slowness of the attorney general in developing appellate procedures, and the need for the Department of

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[120] Interview, *supra* note 86.

[121] 343 F. Supp. at 314-15.

[122] Interviews with Dennis Haggerty, *supra* note 104, and Dr. Herbert Goldstein, *supra* note 103.

[123] Order (filed June 15, 1973), *P.A.R.C.*, 343 F. Supp. 279 (E.D. Pa. 1972).

Education to take responsibility for private licensed facilities. By July 1973, the court had acted on none of these.[124]

Why the court failed to act is not clear. While it was responsive to PARC's motions seeking remedies for noncompliance in Philadelphia,[125] actions on motions from PARC are the only ones the court has taken since the issuance of the final decree in May 1972. The court may have simply chosen not to take an activist stance, leaving the issue with the parties. On the other hand, the Masters may have given up too soon. Since March 1973, they have filed none of the required monthly reports. Whatever the reasons, the court's failure to back the Masters has limited their effectiveness.

Another limitation on the Masters' effectiveness may have been that both had full-time jobs; their court assignment under the *P.A.R.C.* agreement was an added responsibility. Dr. Goldstein is an internationally known expert on curriculum designed for retarded children whose work carries him around the country and often overseas. Because of these extensive commitments, he was forced to miss several of the Masters' hearings. Besides his law practice, Mr. Haggerty's interest and experience in the field of legal aspects of mental retardation have involved him in a host of outside activities including work for the President's Committee on Mental Retardation. As a result, the time he could devote to his role as Master also has been quite limited. Compounding this problem, the limited duration of the Masters' tenure allowed stubborn school districts simply to postpone any action until after the Masters departed. A final limiting factor was the state's failure to provide the Masters with strong financial support. As a result, they were obliged to depend on the Right to Education Office to fulfill their staff requirements; the State Special Education Bureau was of limited help.

The Masters relied heavily on PARC, which placed many of the discussion items on the Masters' agenda, and used the sessions to question state and local officials about educational practices. The sessions thus provided PARC with a lever to apply public pressure and set in motion administrative action. The Masters Hearings were devoted almost entirely to procedural and quantitative matters, with very few agenda items touching on the quality of new programs. In part, this focus represented a strategy, carefully thought out by PARC, designed to make sure that the Masters created sufficient structure to ensure continued implementation of the reforms once their term expires. In part, too, it might simply indicate the difficulty in dealing with a concept as vague as "appropriate education." The stress on procedures may also reflect what Master Herbert Goldstein believes to be the difficulties of sustaining consumer pressure at the local level once the primary motivating factor—in this case, the presence of retarded children in the home or in non-responsive and sometimes highly expensive institutions—is removed.[126]

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[124] Presentation of Dr. Ruth Scott, presented orally, Masters Hearing, July 10, 1973 (report to the Masters on the status of the Pittsburgh census).

[125] Order (filed Apr., 1973), *P.A.R.C.*, 343 F. Supp. 279 (E.D. Pa. 1972).

Even with all the limitations of their role, it would be a mistake to discount the importance of the Masters. They provided a readily accessible forum in which PARC was able to raise questions and bring complaints. More important perhaps, it was a forum clothed in the dignity of a federal court having the power to require the appearance of representatives of key state agencies. This aura of power has spurred most of the districts in the state into at least the semblance of compliance. School administrators were awed by the Masters, sometimes working weeks to prepare a written report in anticipation of being called to testify.[127] It is difficult to assess the impact of this symbolic extension of the court, but it is clear that a remarkable degree of interagency cooperation was achieved because of it.

The Masters have made substantive contributions beyond those resulting from their perceived power. Where the court did not adopt their suggested orders, the Masters nevertheless achieved their ends by prodding and persuading the various non-complying parties. They also kept some matters out of court by successfully mediating disputes.[128] By bringing together interested parties from all over the state for hearings and special sessions, the Masters educated people to the meaning of the decree and to the ideas—such as the educability of all children—underlying it. Finally, they not only supervised the implementation of *COMPILE* and *COMPET*, but saw to it that *COMPET* will be rewritten on the basis of the 1972-73 experience. Thus, while the Masters were constrained by the way their role was structured, without them *P.A.R.C.* implementation would have been even more chaotic and disorganized than it has been.

b. The Right to Education Office

When Governor Shapp established the Right to Education Office shortly after the consent agreement was issued, PARC strategists saw it, along with the due process hearings and the local task forces, as one of three keys to successful implementation. The Office was given the responsibility of overseeing implementation of the consent agreement. It was to develop a plan to identify, evaluate, and educate retarded children; monitor implementation; gather data and oversee the due process hearings, including accepting requests for such hearings, assigning officers, and maintaining records. Finally, it was to serve as a staff for the Masters.

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[126] Interview, *supra* note 103.

[127] On one occasion, a group of intermediate unit directors, experienced at facing public situations, were overheard in the men's room before a Masters Hearing discussing who might have to "go first." This fear is all the more ironic given the relaxed and relatively informal way in which Dennis Haggerty ran the hearings.

[128] See text accompanying note 101 *supra*.

As the agent of the State Department of Education, the Right to Education Office was in the position to develop standards, establish program guidelines in terms of content, staffing patterns, in-service training and the like, and evaluate outcomes through careful monitoring. To do this, it gathered a staff of twelve: a director and business manager (both on loan from the Department of Education), an in-service consultant (on loan from the Department of Public Welfare), four area coordinators, and five secretaries (funded by a one-year, renewable federal grant). While the size of the Right to Education Office, exceeding that of the Bureau of Special Education, suggests the strong commitment of the state to implement the *P.A.R.C.* agreement,[129] the Office's temporary nature and precarious funding have proven to be serious roadblocks to full effectiveness. Because officials attuned to the politics of state bureaucracy perceive Joseph Lantzer, the Right to Education Office's Director, as a once and future employee of the Bureau of Special Education, his authority has been undermined from the outset. Perhaps more important, instead of being able to operate as a free and independent regulatory agency, the Right to Education Office has had to function essentially as the arm of a typically politicized state bureau. As a result, the Office has moved cautiously on such sensitive questions of compliance as the resistance of the Philadelphia School District.

Despite these organizational problems, the Right to Education Office staff has received high marks from both PARC officials and the Masters for its dedication to the principles of the consent agreement and for its efforts to ensure implementation.[130] Furthermore, all agree that the Right to Education Office could be highly effective if it were made a permanent and independent agency. PARC views this as one of its major objectives as it prepares for a future without the Masters.

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[129] In fact, this was cited as evidence of the commitment of state agencies by the Masters in their First Report, *supra* note 73. That the Right to Education Office was the only state bureau, other than the emergency office for flood relief, kept open during the terrible 1972 spring flooding in Pennsylvania provides further indication of the amount of state backing the consent decree received.

[130] In separate interviews with Peter Kuriloff, this kind of appreciation was expressed by Marliene Smoker, Assistant Director for Administration and Governmental Affairs for PARC, in Harrisburg, June 12, 1973, and Peter Poloni, Executive Director of PARC, in Harrisburg, Jan. 15, 1973, as well as by Masters Haggerty in Philadelphia, May 8, 1973, and Goldstein, in Philadelphia, June 11, 1973.

c. *The Local Task Forces*

COMPILE required the establishment of local task forces to help school districts carry out evaluation and planning. They were to be organized by the Intermediate Unit Executive Directors, who were to select task force members from representatives of consumer groups and the administrators of the local school districts, county mental health and mental retardation centers, and private agencies.[131] It was PARC's hope that the task forces would provide a means for consumers to be heard where it counted most—at the individual program level. PARC offficials now consider this aspiration even more important since the due process hearings have not proven as effective in promoting appropriate educational placement as originally hoped.[132]

The operation of the local task forces has been hampered by serious flaws in their original conception. While specifying their responsibility, *COMPILE* indicated neither the source of their power nor the scope of their authority. Their membership is selected by, headed by, and reports to the Intermediate Unit Director. Since he is not required to follow their recommendations, their power is merely advisory. Furthermore, Intermediate Unit Directors have no authority over District Administrators; for that reason, even if the local task forces had real authority, it is unlikely that it would extend beyond intermediate unit programs to those established by individual districts.

With the October expiration of the Masters' term, many gaps still remain between the concept and implementation of the consent agreement. Unless the local task forces are empowered to monitor implementation, many apparent gains will be lost. Recognizing this, PARC appealed to the Masters to clarify the local task forces' responsibility and authority. At the January 1973 Masters' Hearing the Director of the Right to Education Office was asked to respond. He reported that the idea of giving the local task forces real authority was meeting with bureaucratic resistance. He described how he had recently been asked by the State Task Force[133] to draft a policy statement on the subject.

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[131] COMPILE, *supra* note 70, at 11.

[132] E. Schmidt, *Resource Review Team (Draft)*, June 12, 1973 (on file with Peter Kuriloff).

[133] The State Task Force consists of the Director of the Bureau of Special Education, the Commissioner of Mental Retardation, a representative of the Governor's Office, and representatives of consumer/citizens groups. It has the responsibility of communicating with, and soliciting the cooperation of, all governmental agencies and state level consumer groups about the implementation of COMPILE and COMPET. COMPILE, *supra* note 70, at 4.

Though he had proposed giving substantive power to local task forces, the draft finally approved by the State Task Force was considerably watered down. The Masters were not able to obtain agreement on a more authoritative role for the local task forces before their final hearing, but PARC continues to pursue the matter, threatening judicial action to force increasing the task forces' power. Unless that happens, the parents of retarded children may find themselves without any vehicle for monitoring the quality of local educational programs.

d. Due Process Hearings

Those who framed the *P.A.R.C.* agreement recognized both the importance and the difficulty of securing structural change. They hoped that the guarantee of a due process hearing would promote more carefully considered educational placements for special children and, ultimately, general reexamination of special programs. Thomas K. Gilhool expressed these aspirations in a memorandum to PARC:

> For the first time in American education, a mechanism is created to assure that the educational program fits the child. The mere fact of a hearing opportunity . . . will of course keep all the field professionals on their toes. There is a new instrument of accountability. . . . The right to a hearing creates an extraordinary forum for parents and their associations to express themselves, raise issues, enforce rights, get things done, and to organize. . . . The hearing is a forum which should transform the parents' movement. . . . And it should transform education.[134]

The formal hearing requirements assure parents of a retarded child the right to a hearing upon initial school placement, after any program change, and after every two years of special class assignment. Prior to the hearing, parents may examine the school records on which the recommendation is based. They may retain counsel or professional assistance. During the hearing, they have the right to have the hearing either closed or open to the public.[135] They are entitled to summon and question all the school personnel involved in the decision.

PARC and state education officials moved quickly to set up the hearing mechanism. Sixty-one hearing officers, endorsed both by PARC and the state, were appointed. In May 1972, a first group was given a quick training course by Tom Gilhool and Ed Weintraub, a Pennsylvania Deputy Attorney General, which familiarized them both with the decree and with the hearing procedures. But following an agreement between counsel, training was suspended after this first session. As a result, only thirteen officers had been trained and were working by August. This caused a serious backlog of cases, and placed a heavy burden on the trained hearing officers, who are all employed elsewhere full time.[136] The Right to Education Office took steps to remedy this problem, however, and by the fall there were 34 working officers, drawn from positions in public special education and from colleges and universities. As of April 1973, 255 hearings had been applied for across the state; 47 had been held, and decisions reached in 43. Sixty-nine of the requested hearings had been cancelled. In the 25 hearings open to the public, 13 decisions upheld the school's recommendation, while the balance were decided in favor of the parents—a result which does not necessarily mean the children received a more appropriate education.[137] Parents represented by counsel were significantly more likely to win a favorable ruling.[138]

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[134] RIGHT TO EDUCATION, *supra* note 57, at 58.

[135] 343 F. Supp. at 303-06.

Although the *P.A.R.C.* decree sets forth rudimentary substantive guidelines for the conduct of the hearings—for example, the presumption that regular class placement is preferable to assignment to a special class—the individual hearing officer, who is usually a special educator, decides how the hearing is to function. Some of the hearing officers are still confused about their role. PARC officials assert that some hearing officers have turned away cases on the grounds that transportation issues are beyond the scope of the due process hearings, others on the grounds that appropriate programming is unreviewable.[139] Where proper hearings have been held, some PARC spokesmen have noted that not all avenues of search have been undertaken to assist in proper placement or appropriate programming, even though it is the officers' duty to order such a search if they find it necessary.[140] Finally, PARC officials claim that the presence of lawyers has created problems at some hearings since, unlike educators, lawyers tend to focus more on the procedural than on the substantive questions.[141]

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[136] First Report, *supra* note 73, at 4-5.

[137] Many lawyers and educators have argued that the less adversarial the hearing, the more chance there is of arriving at a good plan for the child. This argument is developed in Part III of this Article.

[138] This was determined by using the X^2 technique on the following table:

	Parent "Wins"	Parent "Loses"
Lawyer present	9	3
Lawyer not present	4	9

$X^2 = 4.89$
$p > .05$

Since the cell values are so small, this finding should be considered as merely suggestive.

[139] Interview of Peter Kuriloff with Jack Hagele, in Philadelphia, July 10, 1973.

[140] E. Schmidt, *supra* note 132, at 2.

[141] *Id.* This complaint may stem from a misunderstanding of lawyers' methods during the hearings, rather than from a failure on the part of the lawyers to grasp the substantive issues.

No provision has been made to encourage hearing officers to read each other's decisions. No one—neither other hearing officers, nor the lawyers, nor PARC officials—has had access to the hearing transcripts or the written decisions in closed hearings. A preliminary canvass of the decisions suggests that an argument that may prevail before one officer will be rejected by another; and, since there have been no decided appeals (as of this date) there exists no system of precedent to guide the decision-maker. The best that the parties to a dispute can hope for under such circumstances is what David Matza has termed "individual justice."[142] The implementation of individual justice poses problems both for the school system and for the parents. The parent challenging a particular placement has no way of knowing what sort of proof will be appropriate, what evidence is to be credited, or what procedural burdens (if any) he must surmount. School officials are similarly confused.

There is, of course, a standard—"appropriate education"—which in theory governs the inquiry.[143] But that standard is so broad and elastic that the hearing officer cannot apply it in routine fashion. Instead, he must choose among versions of that standard, adopting criteria that necessarily vary from hearing to hearing, and from hearing officer to hearing officer. The process by which decisions are reached seems similar in many respects to that of the juvenile justice system, although the ostensible goals of the two types of hearings differ. In both situations, "hardly anyone and least of all the recipients of judgment who have some special interests in these matters, is at all sure what combinations of the widely inclusive relevant criteria yield what sort of specific dispositions."[144]

The availability of hearings has been a useful political tool, both for parents and school officials. Officials have threatened parents with a hearing as a means of obtaining acceptance of the recommended placement; for some parents, concern about publicity, discomfiture with adversariness, and the quite real possibility of losing come perilously close to coercion. Many of the same factors operate to the advantage of more activist or recalcitrant parents;[145] the cost of the hearing—in time, although not in dollars—may lead districts to acquiesce in the parents' wishes about placement.[146]

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[142] D. MATZA, DELINQUENCY AND DRIFT 111 (1964).

[143] Hearing officers in fact make choices, rather than resolving differences, much as an arbitrator might. But the conduct of the hearings generally has been informal, a style associated with mediation. *See* Fuller, *Adjudication and the Rule of Law*, 1960 PROCEEDINGS OF THE AM. SOC'Y OF INT'L L. 1.

[144] D. MATZA, *supra* note 142, at 115.

[145] This is the case in the Allegheny Valley School situation, in which parents threaten to use hearings as weapons to keep the school district from removing their children from Allegheny Valley. R. Scott, *supra* note 111.

Hearings can also have serious unexpected consequences. In one district in the north-eastern part of the state, parties to the hearings became so antagonistic that the teachers present became extremely upset; subsequently, teachers throughout the district referred no more children for evaluation to the intermediate unit. This episode suggests that teachers may not understand the purposes of the due process hearings. More importantly, it means that hearings can be conducted in a manner that not only defeats the spirit of the decree, but also keeps children needing other kinds of help from receiving it. It is another example of the complex dynamics which must be taken into account in order successfully to implement the reform contemplated in *P.A.R.C.*

In two respects the formal hearing procedures have been modified since the *P.A.R.C.* decree. First, in order to resolve essentially technical disputes—for example, what transportation is to be provided to get a particular child to his special program—the Department of Education has introduced an informal prehearing session. Second, both PARC and the state have adopted a mechanism for appealing from the hearing decision. Such disputes are heard first by the Secretary of Education, whose rulings may then be appealed to the commonwealth court.[147]

3. *Recapitulation*

More than a year after the court approved the *P.A.R.C.* consent decree, the evidence tells an uneven tale. Pennsylvania has been able to identify some 7,400 previously excluded children, a feat which can be credited both to strong official support and to the persistent efforts of an active statewide parents group. But with respect to the more basic educational and organizational questions—the evaluation and "appropriate" placement of exceptional children—the results are far less clear. The organization and nature of speech educational services, although expanded, remains generally the same. As Master Herbert Goldstein notes:

> Unfortunately, the state has not tackled its substantive issues with the same zeal and flamboyance as the procedural questions. The results—thus far—are an array of facades (finding, testing, placing, etc.). . . . But there isn't much new educationally in Pennsylvania, as an outcome of the case. . . . If the state educational

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[146] Pennsylvania officials estimate the dollar costs of each hearing at $500—about half the amount spent on the schooling of a typical Pennsylvania child each year. The state, and not the school district, bears this cost. Interview of Peter Kuriloff with William Orhtman, Chief of Bureau of Special Education, in Harrisburg, Jan. 9, 1973.

[147] Masters Hearing, July 10, 1973.

people do not change their ways and begin aggressively to re-shape and originate, facades are all that Pennsylvania will have.[148]

B. *Mills v. Board of Education*[149]

1. *Introduction: A Beleagured School District*

Washington, D.C. has a crisis-prone school system. The overwhelming majority of the District's 140,000 students are black and poor;[150] teacher turnover is high; and superintendents have come and gone with remarkable frequency.[151] The city is property-poor, as its most valuable land is held by tax-exempt public and private institutions, and it must depend for its schools' fiscal support on the Congressional committees responsible for District affairs. The schools have been repeatedly studied by educational professionals, all of whom have urged sweeping changes.[152]

Demands for change in Washington's schools have been the subject of judicial action as well. The sweeping decision in *Hobson v. Hansen*[153] sharply criticized a host of school practices: the segregation of both students and faculty, the disparity in resources available to predominantly white and black schools, and the discriminatory effects of the District's rigid tracking system which locked most blacks into dead-end school careers.[154] While the district court's directive that the existing tracking system "must simply be abolished"[155] was watered down by the Court of Appeals,[156] the school system apparently terminated a number of special education classes because of its erroneous understanding of *Hobson*.[157]

Washington's judicial headaches did not cease with the first *Hobson* decision. In 1970 the case was reopened,[158] and the court again considered allegations that school spending policies favored schools in the predominantly white neighborhood west of Rock Creek Park. The court ordered the equalization of expenditures for teachers throughout the system but permitted the District to spend additional funds for "exceptional children."[159] Mindful of the District's problems in implementing the first *Hobson* decree, the court required regular and detailed reporting of relevant data.[160] But still the school system responded so slowly that in 1972 plaintiffs brought a contempt action.[161] The District was not displeased with the *Hobson* decision—indeed, it declined to appeal the ruling; but its ungainly and generally inefficient school bureaucracy seemed simply incapable of effecting the required changes.[162] One year after the second *Hobson* decision the same bureaucracy was confronted with the even greater challenge of complying with *Mills v. Board of Education.*[163]

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[148] Written comment to an earlier draft of this section, July, 1973 (on file with Peter Kuriloff).

[149] 348 F. Supp. 866 (D.D.C. 1972). Fieldwork for this section was conducted between Dec. 1972 and Oct. 1973.

[150] Address by Hugh J. Scott, Superintendent of Washington, D.C. Schools to the Washington, D.C., City Council on the fiscal year 1974 budget, Jan. 5, 1973.

[151] Washington has had four school superintendents since 1967.

[152] *See, e.g.*, H. PASSOW, TOWARD CREATING A MODEL URBAN SCHOOL SYSTEM: A STUDY OF THE WASHINGTON, D.C. PUBLIC SCHOOLS (1967).

[153] 269 F. Supp. 401 (D.D.C. 1967), *appeal dismissed*, 393 U.S. 801 (1968), *aff'd en banc sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

[154] *Id.* at 406-07.

[155] *Id.* at 515.

[156] The Court of Appeals' decision limited the applicability of the district court order to the existing tracking system, while permitting "full scope for . . . ability grouping." 408 F.2d 175, 189 (D.C. Cir. 1969).

[157] *See* Herr, *Retarded Children and the Law: Enforcing the Constitutional Rights of the Mentally Retarded* 23 SYR. L. REV. 995, 1008-15 (1972) [hereinafter cited as Herr].

[158] Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971).

2. *The Scope of the* MILLS *Decree*

In many respects, *Mills* and *P.A.R.C.* were similar efforts. Both sought to establish the constitutional principle that children excluded from school as "ineducable" were entitled to publicly supported education; and both insisted that procedural protections be provided to children prior to placement in special programs. The plaintiffs in *Mills,* however, represented a broader range of excluded children, including students who had been barred from school as incorrigible discipline problems and students denied an education because of physical, mental, or emotional handicaps. The *Mills* plaintiffs hoped to establish the principle that all children, regardless of their disabilities or behavioral symptoms, are constitutionally entitled to publicly supported schooling.

Unlike *P.A.R.C.*, the *Mills* suit can fairly be characterized as a lawyers' venture. Although the D.C. Family Welfare Rights Organization supported the litigation and appeared as a "next friend" of one of the young plaintiffs, there existed in Washington no broad-based parents' group historically committed to and able to follow through on the issue.[164] Instead, three public-interest legal organizations—the National

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[159] *Id.* at 863-64.

[160] *Id.* at 864.

[161] Hobson v. Hansen, Civil No. 82-66 (D.D.C., filed Jan. 17, 1973) (contempt motion denied).

[162] Herr [*supra* note 157, at 1013] accurately refers to the "Byzantine irresponsibility" of the Washington bureaucracy.

[163] 348 F. Supp. 866 (D.D.C. 1972).

[164] Memorandum to David Kirp from Patricia Wald, Mental Health Law Project staff attorney, Implementing Mills: The First Six Months, Mar., 1973 (on file with David Kirp) [hereinafter cited as Memo].

Legal Aid and Defender Association, the Center for Law and Social Policy, and the Harvard Center for Law and Education—spent nearly two years planning the litigation.[165] Their efforts paid off.[166] In August 1972, three months after *P.A.R.C.*, Federal District Court Judge Joseph Waddy handed down an order which provided substantially all the relief plaintiffs had requested.[167]

The court's discussion of the constitutional merits of this very important decision was remarkably cursory.[168] It found constitutional warrant for the universal right of access to publicly supported schooling in *Brown v. Board of Education*[169] and *Hobson v. Hansen*,[170] and concluded broadly that "[d]ue process of law requires a hearing prior to exclusion, termination or classification into a special program."[171] Although the court noted that school officials had failed "to abide by the provisions of . . . previous orders" and demonstrated "continuing failure to provide an education" for excluded children,[172] it declined to follow *P.A.R.C.* and appoint a master to oversee implementation of the decree. Responsibility for developing and carrying out a plan to identify, evaluate, and provide suitable educational opportunities for previously excluded children was left entirely to the District.

3. *The Implementation Plan*

a. *The Hope*

The plight of Washington's handicapped children was hardly news to school officials. For several years, frustrated parents had sought an increase in the District's tuition-grant program that enabled handicapped children to attend nonpublic special schools at city expense.[173] In December 1971, a Task Force on Special Education appointed by the Superintendent of Schools reported that:

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[165] *Id.* These organizations initially sought to intervene in the reopened *Hobson* case, arguing that Washington's exclusion policy flowed partly from a misreading of the first *Hobson* decree. Although denying the motion to intervene, the court characterized the plight of the excluded children as a "human tragedy, unbelievable as it is in the capital of the richest country on earth." *Hobson v. Hansen* (D.D.C., June 17, 1971) Ruling on Motion to Intervene at 3-4, July 23, 1971, as quoted in Herr, *supra* note 157, at 1008 n.70.

[166] *Id.*

[167] *Id.*

[168] Mills v. Board of Educ., 348 F. Supp. 866, 874-75 (D.D.C., 1972).

[169] 347 U.S. 483 (1954).

[170] Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967).

[171] 348 F. Supp. at 875.

[172] *Id.* at 877.

[173] Complaint, Exhibit D, Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972) (Julius W. Hobson, The Tuition/Grant Program of the District of Columbia Public Schools, report to the District of Columbia Board of Education, November 19, 1969).

> In the city of Washington, the acknowledgement of the right of the handicapped child to public education has been honored more in the breech [*sic*] than by observance. The obscene nightmare of repetition from year to year continues for the parents of these children who must compete for placement and for funds or accept the exclusion of their child from the opportunity to develop his human potential.[174]

The District's activity immediately after *Mills* suggested that notable alterations in both policy and practice might be forthcoming. A man with respected academic credentials in the field of special education, Merle Van Dyke, was appointed Assistant Superintendent for Special Education. The implementation plan[175] submitted by the School Board one month after the *Mills* decree appeared to be comprehensive and imaginative, if somewhat vague. It emphasized keeping all but the most severely handicapped children in the regular schoolroom setting.[176]

b. *Identification*

Just as in Pennsylvania, no one really knew how many school-age children in Washington, D.C. were being denied an education. An internal memorandum indicated that the District was aware of 1,500 children identified as requiring specialized education who were on waiting lists for placement,[177] and *Mills* refers to another memorandum which estimated that "12,340 handicapped children were not to be served in the 1971-72 school year."[178] It is unclear how many of the children referred to were receiving no schooling at all and how many were in school but denied special services which the school system thought they needed.

The District proposed an assortment of approaches to identify these excluded children.[179] Its Department of Pupil Personnel Services was made responsible for conducting court-ordered quarterly outreach efforts that included advertising on local television and radio stations and in the newspapers. The District promised to conduct an annual census of children aged three to eighteen years if Congress could appropriate the funds,[180] and would require semi-annual reports of all children receiving special services from agencies or schools other than the public schools. The Department of Special Education would report quarterly on the number of children it was serving in various programs, and teachers and principals would seek out and make referrals of youngsters who appeared to need supplementary help.

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[174] Task Force on Special Education, Report of the Superintendents' Task Force on Special Education 1 (Public Schools of the District of Columbia) (Dec., 1971).

[175] Public Schools of the District of Columbia, Comprehensive Plan for Special Education: An Abstract (1972) [hereinafter cited as Plan].

[176] *Id.* at 2.

[177] Washington, D.C. Dep't of Special Educ., Needs of Exceptional Children in the District of Columbia 14, Oct. 1971 (report to the Superintendent of Schools, on file with the Department of Special Education).

[178] Mills v. Board of Educ., 348 F. Supp. 866, 868-69 (D.D.C. 1972).

[179] Plan, *supra* note 175, at 2, 16-17.

c. *Evaluation and "Suitable" Placement*

The implementation plan sought to minimize segregation of handicapped children: it stressed the need to deliver special services in the regular classroom and to return children requiring services in a special education environment to the regular classroom as quickly as possible.[181]

Nine levels of educational programming were specified for children with special problems. Level I to III children could stay in regular classrooms with special supportive help from educational assessment teams (professionals skilled at evaluation), school-based specialists, and mobile diagnostic and crisis teams.[182] These special personnel would initially undertake careful evaluations of children hastily placed in special programs at the beginning of the school year, and subsequently evaluate children in regular classes for whom some special help might be beneficial.[183] Level IV children, those homebound or in hospitals, would be served by instructors who would visit the home school and attempt to keep the student up with his class.[184] Level V children, seven-to ten-year-olds with mild to moderate problems, would be placed in "non-categorical compensatory learning centers" away from their home school on a half-day basis.[185] Level VI children include visually impaired and trainable mentally retarded youngsters. Visually impaired children ready for a flexible environment would be placed in special classes in the regular school and eventually moved into the regular school setting with an itinerant teacher. The trainable mentally retarded would be placed in neighborhood-based special classes providing as much integration into the regular program as possible.[186] Level VII children include the blind, deaf, severely retarded, physically handicapped, and emotionally or behaviorally disturbed, who would be placed temporarily or permanently in special schools.[187] Level VIII youngsters are those placed in psycho-theraputic day care programs at mental health centers. Educational programs taught by special-education instructors would supplement the care they had previously received.[188] Level IX children, those for whom no appropriate placement can be found in the public schools (*e.g.*, the multiply handicapped), would receive tuition grants to private schools.[189]

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[180] Such a census had long been required by law, D.C. CODE ANN. § 31-208 (1973), but had never been conducted.

[181] PLAN, *supra* note 175, at 1-2.

[182] The mobile crisis teams have been dropped as unworkable. Public Schools of the District of Columbia, Goal VIII: Special Education 32 (June 1973) (copy on file with David L. Kirp) [hereinafter cited as Goal VIII].

[183] PLAN, *supra* note 175, at 3-5.

[184] *Id.* at 5.

[185] *Id.* at 5-6.

[186] *Id.* at 6.

The Plan further provided for retraining regular teachers; and principals and central administrators were to participate in a staff development program to learn about their responsibilites under *Mills*.[190] The Board of Education committed itself to making budget requests for fiscal year 1974 and beyond that would "accurately reflect the needs of exceptional children."[191] But between the Plan's promise and its fulfillment, several things went awry.

4. *The Implementation Reality*

a. *The Lack of Data*

No one in Washington knows fully what impact *Mills* has had. The court decree made no provision for data-keeping or for reporting to the court, the welfare rights group, plaintiffs' attorneys, or the public. While the district's own plan contemplates some reporting,[192] the scope and details of that responsibility remain unclear. The absence of official pressure for periodic reporting means that there is no guarantee of information-gathering except at budget-making time. For instance, at any given time it is almost impossible to find out how many disturbed children are totally out of school; how many are in school but not receiving the services they need; and how many are undergoing assessment.[193]

b. *The Identification Problem*

Washington's outreach efforts were considerably less sophisticated than Pennsylvania's. In August and November 1972, the District advertised over radio and television and in the three local newspapers. The first set of newspaper advertisements appeared in the classified ad section and were addressed to "handicapped children." Later, ads more fetchingly captioned "Children Wanted" appeared in the movie section.[194] Responses to these advertisements were considerably fewer than had been anticipated: only 185 exceptional children and 453 suspended students were located. No annual school-age census has as yet been undertaken for the money needed for the task cannot be found. Despite these inauspicious beginnings, the Assistant Superintendent for Special Education reported that as of October 1973, 11,000 children were receiving some special-education services—a nearly three-fold increase over the previous year.[195] Where these new students came from and the nature of the educational services they received cannot be deduced from the District's data.[196]

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[187] *Id.* at 6-8.

[188] *Id.* at 8.

[189] *Id.*

[190] *Id.* at 20.

[191] Memo, *supra* note 164.

[192] PLAN, *supra* note 175, at 16-17.

[193] Written comments of Patricia Wald to the authors on an earlier draft of this section, Oct. 30, 1973 [hereinafter cited as Comments.] *See* Washington Star-News, Oct. 14, 1973, at C-1, col. 2 (Mr. Van Dyke, assistant superintendent for special education, citing figures but uncertain what they represent).

There may well remain a number of unserved children. Washington provides only one class (with a capacity of 20 students) for severely and profoundly retarded children; less than a dozen others receive tuition assistance enabling them to attend the few private schools in the area which accept such children. School officials have estimated that at least 100 seriously handicapped youngsters, many nonambulatory, exist unknown to school officials. There are also persistent reports that some day care programs attended by exceptional children still offer only custodial or recreational services.[197] The educational opportunities available to the children institutionalized in the local school for the retarded and St. Elizabeth's hospital for the mentally ill remain a mystery: the Board of Education and Department of Human Resources have yet to work out a joint program for them.[198] At least 30 children eligible for tuition vouchers have been kept out of school by the District;[199] an additional 150 such exclusions are presently anticipated by District administrators.[200] While the District claims that waiting lists are a thing of the past, names of children still out of school continue to turn up, encouraging the conclusion that while there are no lists, there are still people waiting.

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[194] Memo, *supra* note 164.

[195] Washington Star-News, Oct. 11, 1973, at C-1, col. 3.

[196] Ms. M. Louise Malone, Assistant Executive Director of the District of Columbia Citizens for Better Public Education, notes that 11,000 students is a deceptive figure since, unlike earlier calculations, it includes students who receive any help, however sporadic, from special educators. Telephone interview of David L. Kirp with M. Louise Malone, Nov. 16, 1973.

[197] Memo, *supra* note 164.

[198] See text at notes 304-05 *infra*.

[199] Washington Star-News, October 11, 1973, at C-1, col. 3.

[200] Memorandum from Merle G. Van Dyke, Assistant Superintendent to Barbara Sizemore, Superintendent, October 16, 1973 (on file with David L. Kirp).

c. The Information Problem: Teachers and Principals

People were understandably confused about the scope of the *Mills* decision. Many, including principals, focused only on the student-discipline aspects of the case.[201] They thought *Mills* barred all suspensions and would cripple efforts to maintain school discipline,[202] while in fact it permits suspensions prior to a hearing if the principal decides the pupil is a physical threat to himself or others, and for ten days after a hearing.[203] In November 1972, several high school students were arrested for possession and use of marijuana on the grounds of one of the District's high schools. In a widely circulated statement, the principal deplored the fact that because of *Mills* he could not render the customary suspensions, and irate parents threatened to take the matter to the Board of Education.[204] Concern about the implications of *Mills* on control of student discipline persists. One principal commented: "If the schools kneel to the Waddy decree, we'll have all kinds of thugs in the high school."[205] A teachers' union leader shared that view: "We cannot be actively held responsible for the education of any child in the district while forced [by *Mills*] to keep unruly children in school."[206]

To implement a decree such as *Mills*, which radically alters the functioning of the school, the understanding and cooperation of those who must carry out its mandates—particularly principals—is crucial. If principals view implementation as a low-priority matter, they are unlikely to attend seriously to it. And even if principals do recognize that school exclusion is educationally indefensible—and illegal—they are likely to treat children once excluded as no longer their concern but solely that of the special-education department. School organization has historically encouraged such divisions of responsibility. The District's training program, designed to alter this pattern of regular system behavior, has not been a notable success. Despite a district claim that "an administrator from virtually every school"[207] had attended a special course following *Mills*, many of the principals and teachers in the system remain unfamiliar with the *Mills* decree. Training sessions for school personnel have been held periodically since Sep-

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201. *See* Washington Post, March 10, 1973, at E-1, col. 4.

202. *See* EDUCATION USA, May 14, 1973, at 205.

203. 348 F. Supp. at 883.

204. *Hearings on the Aftermath of* Mills *Before the Subcomm. on Education of the House Committee on the District of Columbia*, 93d Cong., 1st Sess., (May 29, 1973) (not yet established) [hereinafter cited as *Hearings*]. Superintendant Scott furthei testified that the number of suspensions has in fact decreased since *Mills*. *Id.*

205. Washington Post, May 2, 1973, at C-1, col 7.

206. *Id.*

207. Goal VIII, *supra* note 182, at 1.

tember 1972. Most sessions, however, tend to be windy lectures mixing information and misinformation. Discussion is at best sporadic, and since attendance at the entire session is not obligatory, much of the audience drifts away.[208]

Those who work in the schools have not denied that pupils who have been barred from school as ineducable desperately need help. Numbers of teachers have expressed regret that it took a lawsuit to commit the system to educate every child. But such sentiment has little practical utility unless the school district offers information and training to reckon with the needs of these children, and the resources with which to do the job. Thus far, neither has been forthcoming.

d. Resources: The Problem of Competing Priorities

The provision of "suitable" education—the *Mills* requirement—is a complicated and expensive matter. Yet despite the fact that the district, responding both to Congressional mandate and federal court order, has substantially enlarged its special education budget, considerable problems remain.[209]

Between 1971-72 and 1973-74, moneys available for special education increased from $7.277 million to $10.197 million;[210] much of that jump was due to a special 1972 Congressional appropriation of $2.1 million.[211] These additional funds were used almost entirely to hire new school-based "crisis resource" teachers: special education staff increased from 495 in 1971-72 to 641 the next year.[212] But these increased allotments have not kept pace with enrollment, which has climbed steadily with the implementation of the 1972 plan. School officials have repeatedly and publicly admitted that there were insufficient resources to accommodate previously excluded children in appropriate programs.[213] Although resources may well be inadequate, the District's use of funds is, at best, question-provoking. Despite repeated statements by school board members that the education voucher program would have to be dramatically expanded to meet the immediate needs of previously excluded children,[214] the voucher budget has remained stable and the numbers of students receiving vouchers has actually been cut. Only a threatened lawsuit precipitated hasty efforts to transfer $670,000 from various surplus accounts to augment the voucher program.[215] While assessment and placement of previously excluded children, required by *Mills,* should have been a first priority of the district, the effort still has not been completed. Thirty-nine psychologists in the Pupil Personnel Office serve the entire district, although 15-20 more are needed to satisfy the demand for their services. Only 10 psychologists and six social workers serve one area which encompasses 51 separate schools.[216]

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[208] Memo, *supra* note 164 (Ms. Wald attended some of the training sessions); Letter to David L. Kirp from Frank Wiggin, Nat'l Legal Aid and Defender Ass'n, Feb. 15, 1973 (Mr. Wiggin also personally investigated the training sessions.).

[209] Interview, *supra* note 196.

[210] Public Schools, District of Columbia, Fiscal Year 1974 Budget at GA-500-1 (Jan., 1973) [hereinafter cited as FY 1974 Budget]; Fiscal Year 1975 Budget Summary, Schedule 4 (Oct. 26, 1973) (both on file with David L. Kirp).

[211] Interview, *supra* note 196.

[212] FY 1974 Budget, *supra* note 210, at GA-500-3.

[213] Washington Star-News, Oct. 14, 1973, at C-1, col. 2.

[214] Mason, Report on Sepecial Education Tuition Grant Funding, Oct. 19, 1973 (report to the Board of Education) (on file with David L. Kirp).

If the demand for services truly outstripped available resources, one would expect some needs to go unmet. But bureaucratic inefficiency has compounded one problem. In June 1972, $1.7 million—nearly 20% of the special education funds—remained unspent. One year later, the District was unable to spend $757,000 of its budget.[217]

Nor has the District proposed further increases in the special education budget. In January 1973, the Associate Superintendent for Special Education sought $2.622 million in new funds to improve placement procedures, develop programs for profoundly retarded, preschool, and learning-disabled children, and to augment the meagre staff development program.[218] He noted: "The programs are *not* listed on a priority basis as all are of critical import."[219] The request was ignored, and the 1973-74 budget provided for an increase of just seven percent—from $9.5 million to $10.2 million—most of which was to be spent on mandatory pay increases.[220] It cut 40 authorized positions and authorized no new money for educational or staff programs.

These facts have discouraged teachers and principals. They fear that because of asserted fiscal exigencies, the laudable intention of keeping as many children as possible in regular classes will result only in token extra support for the already overburdened classroom teacher. Principals are reportedly retaliating by resorting to the pre-*Mills* technique of telling youngsters, especially those over 16 years of age, that they cannot come back to school. Such behavior is of course illegal, but it may also be the only way that school-level personnel can cope with their ongoing crises.[221]

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[215] *See* Washington Star-News, Oct. 11, 1973, at C-1, col. 3.

[216] *Hearings, supra* note 204.

[217] Mason, *supra* note 214.

[218] Memorandum from Merle G. Van Dyke to Dr. Hugh J. Scott, Superintendent of Schools, Additional FY 1974 Budget Request (Jan. 15, 1973) (on file with David L. Kirp).

[219] *Id.*

[220] The special education department also anticipated receiving $81,900 in revenue sharing grants. FY 1974 Budget, *supra* note 210, at 6A-500-3.

[221] *See* Platt, An Analysis of the Implementation of *Mills v. The Board of*

The fiscal future remains unclear. In June 1973, shortly before leaving the superintendency, Scott proposed that the 1973-74 budget be increased by $4.075 million.[222] That suggestion demonstrated a flair for the dramatic gesture, if little else; since school budgets must be approved by the school board, the mayor-commissioner, the city council and both houses of Congress,[223] there was little possibility that the increase would be adopted during the current school year. The Board of Education unsuccessfully sought clarification of the proposal and referred the suggestion to its Committee on Curriculum, Special Education, and Education Planning, with no immediate action contemplated.[224] Barbara Sizemore, the new superintendent of schools, has incorporated Scott's request into the initial 1974-75 draft budget,[225] thus leaving open the possibility that new money will ultimately flow into the special education program.

Even if the budget increase is ultimately approved, the financial headaches of special education will not cease. Special education demands more than the resources which it is specifically guaranteed in the budget. It regularly requests the Pupil Personnel Division to undertake initial evaluations, public relations personnel to inform the community of its activities and discover unserved children, the research division to do rudimentary program evaluation, and, most important, regular teachers and principals to assume some responsibility for "special" children. Each of these requests for help masks a budgetary drain on some other program. And educators in the system, who correctly perceive that special education is garnering most of the new money which Washington has received in recent years, are increasingly unwilling to share scarce resources.[226]

e. The Coordination Problem: The Department of Education and the Department of Human Resources (*DHR*)

Prior to *Mills*, responsibility for children who needed a variety of services—education, physical therapy, counseling—was divided between the school system and the District's Department of Human Resources. The school system thought that severely retarded children needed "treatment", which the Human Resources professionals presumably offer, while the Department of Human Resources thought they needed "education." The *Mills* decree attempted to solve this

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Education of the District of Columbia: Is Due Process Being Afforded in the D.C. School System? 1, May 4, 1973 (on file with David L. Kirp).

[222] Goal VIII, *supra* note 182, at 36-40.

[223] Mason, *supra* note 214.

[224] *Id.*

[225] Fiscal Year 1975 Budget Summary, Schedule 4, *supra* note 210.

[226] Interview, *supra* note 196.

problem. The court, after noting the "lack of communication and cooperation between the Board of Education and the other defendants,"[227] declared that "if the District of Columbia government and the Board of Education cannot jointly develop the procedures and programs necessary to implement this court's order, then it shall be the responsibility of the Board of Education to present the irresolvable issue to the court . . . ."[228]

Coordination sounds like a good thing—but it cannot be achieved by fiat.[229] If previous failings had resulted just from unawareness of a problem, then the court's instruction to work together might indeed have sufficed to improve the working relationship of the two institutions. But in Washington, D.C., the lack of interchange between educators and human resource professionals could not so simply be rectified, as the two agencies disagreed about basic goals and their respective responsibilities. In such a situation, "coordination becomes another term for coercion . . . a form of power."[230] When the precise form of coordination remains unspecified, invocation of the term "does not necessarily provide either a statement of or a solution to the problem, but it may be a way of avoiding both when accurate prescription would be too painful."[231]

Avoidance nicely describes what has actually happened in Washington. Thus far, the Board of Education has continued to maintain little contact with the Department of Human Resources. While the Board's September 1972 plan specified that by mid-November a further filing would delineate the respective authority of the two agencies,[232] that plan has yet to surface. In its September statement the Board also asserted its authority over school programs in DHR-managed institutions and stated that personnel from both agencies would participate in student evaluations. The plan also spoke of "innovative joint programs" for children who could not cope—or be coped with —in the classroom, and it promised that DHR would work with the schools to provide "therapeutic programs."[233] But these statments also remain mere promises. A limited and decreasing number of DHR personnel participate in student evaluations.[234] There are no joint programs for children who disrupt classes (and currently account for most of the school system's suspension cases), although the need for the program was characterized by the superintendent as "most pressing."[235] Indeed, the DHR returned unspent all but $5,000 of the $118,466 budgeted for special programs to the United States Office of Education—[236] a noteworthy example of noncooperation. Educational opportunities for children in institutions for the retarded and mentally ill are currently just "undergoing assessment," and the DHR has yet to use its welfare programs and health clinics to reach children with whom the school system has, at best, limited contact.[237] In short, invoking "coordination" has thus far been an empty gesture.

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[227] 348 F. Supp. at 876.

[228] *Id.* at 877.

[229] This discussion of the political ramifications of coordination borrows from J. PRESSMAN & A. WILDAVSKY, IMPLEMENTATION 133-35 (1973).

[230] *Id.* at 133-34.

[231] *Id.*

[232] PLAN, *supra* note 175, at 19.

[233] *Id.*

[234] Comments, *supra* note 193.

5. *Due Process Hearings*

The *Mills* decree entitles every student whom the District or a parent wishes placed in a special class to a due process hearing.[238] The specifics of the hearing requirement differ only slightly from those in *P.A.R.C.* Parents are notified of intended placement, informed that they may object at the placement hearing, and told that they may obtain legal counsel and the services of non-school professionals competent to do psychological or educational evaluations. To ensure neutrality, the hearing officer must be an employee of the District but cannot be an employee of the school district. Unless the parents specifically request an open hearing, the session is closed. The hearing officer's decision is based solely on evidence introduced at the hearing, and the District has the burden of justifying its placement recommendations or denials.[239]

The public does not know how the special education and disciplinary hearings have actually been conducted,[240] as most of the sessions have been closed. Apparently few parents have sought legal or professional help,[241] which is simply beyond their means. Free legal service for the due process hearings have, however, multiplied in the past year. The federally-funded neighborhood Legal Services Program, as well as Georgetown, Antioch and Catholic University law schools are providing legal counsel, and the Children's Defense Fund is planning to train lay advocates and run an ombudsmen-like, community-based service to help frustrated parents. Private schools often provide evaluations and expert witnesses where tuition subsidies are involved.[242]

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[235] Goal VIII, *supra* note 182, at 11.

[236] *Id.* at 11-12.

[237] *Id.* at 12.

[238] 348 F. Supp. at 880-83.

[239] *Id.* at 881.

[240] Between September, 1972 and April 1973, 11 special education hearings and 61 disciplinary hearings were held. Since April, the number of special hearings has increased dramatically: 17 were held in September, 1973, and they are now being scheduled at the rate of two a day. Comments, *supra* note 193.

[241] The number of parents appearing with lawyers during the 1972-73 school year was approximately six, and the present rate is estimated to be only one in ten. Comments, *supra* note 193, based on Ms. Wald's interview with Robert Burch, director of Hearing Officers, in Washington, D.C., Oct. 21, 1973.

The panel of about 20 hearing officers who hear student suspension cases and placement disputes is selected by the school district Personnel Office. Most of them are psychologists and special educators from nearby universities, untrained in the procedural requirements of legal forums. District personnel have complained that one hearing officer "quibbled over terms," while another demonstrated "hostility" toward school personnel.[243] Many of the hearings are conducted as conferences, with too little attention paid to the procedural formality which the *Mills* decree envisioned.[244] In four of the first eleven special education hearings, the school's recommendation was disapproved by the officer; in the other seven, it was either upheld or the school bowed to the parents' preference and changed its recommendation during the hearing.[245]

The concern for procedural regularity in the due process hearings does not stem solely from lawyerly attachment to formalism. Regularity helps to prevent inconsistent outcomes and provides both school officials and parents some guidance in making placement decisions. Informal conferences may satisfy the parties; they do not, however, produce a body of case law which, over time, will promote understanding of what constitutes "suitable" educational placements.

6. *Conclusion*

To one unfamiliar with the Washington, D.C. school system, it might seem easier to enforce the *Mills* order than the *P.A.R.C.* consent decree. Although its scope is somewhat broader, encompassing disciplinary problems as well as exceptional children, the decision speaks not to myriad programs managed by hundreds of agencies throughout the entire state, but to a single district and a single set of programs. But for a variety of reasons, *Mills* has proved at least as difficult as *P.A.R.C.* to implement. Only a few persons on the Board of Education and in the school system can be counted as whole-hearted advocates of the changes ordered by *Mills*. No well-established organization such as PARC has emerged to press effectively for programmatic change. The court's decision not to appoint a master to oversee the chaotic first months of compliance left the matter wholly in the hands of school officials; and while many of them quite sincerely expressed their concern for the plight of previously excluded youngsters, they had neither the resources nor the organizational commitment needed to translate that concern into substantial educational reform. Looking back over the post-*Mills* events, one Board member wondered whether she had been "naive" in expecting the school district to comply with the decree.

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[242] Comments, *supra* note 193. Free community mental health centers can perform psychological assessments for parents. However, the centers are overcrowded and waits are too long. Moreover, they are run by DHR, a defendant in *Mills*. *See* Goal VIII, *supra* note 182, at 10.

[243] Memorandum to Mr. Vincent E. Reed, Assistant Superintendent, Apr. 5, 1973 (on file with David Kirp).

[244] Whether the local Administrative Procedure Act applies and whether a hearing decision can be appealed for court review remain undecided issues.

[245] Memo, *supra* note 164.

The implementation story is not wholly bleak. The proposed budget for 1974-75 contains a substantial increase for special-education programs; the recently-appointed superintendent appears to be dedicated to improving special education; more parents are requesting hearings and obtaining legal counsel; and an ombudsman program for parents is in the offing. The first year following *Mills* may have served to identify problems; new resources and new commitment to change—both within and without one school system—may help to resolve them.

C. *California: Legislatively Imposed Procedural Constraint*[246]

1. *Introduction: Brick-Bats and Hosannas*

California has long regarded itself as a pioneer in the education of handicapped children.[247] Not long after the territory became a state, it established a school for the deaf, dumb, and blind. In 1947, well before most other states, California required all school districts to provide programs for the educable mentally retarded; some districts had offered such schooling since the 1920's. Mentally retarded students were assured of an improved and expanded educational program in 1963. Educational progress, in California as elsewhere, has meant the proliferation of new categories of exceptionality. In 1963, for example, the state created a program for the emotionally and neurologically handicapped, allowing districts to identify up to two percent of their students as "educationally handicapped (EH)"[248] and to assign them either to self-contained full-day classes (SDC) or part-day learning disability groups (LDG). Other special programs—for example, a voucher plan for children unable to succeed in any public school program[249] and a transitional education program designed to encourage the return of mildly retarded children to regular classes[250]—were introduced during the 1960's.

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[246] Field research for this section was conducted from November 1972 to April 1973. The researchers interviewed teachers, psychologists, special-education administrators, and parents in five quite different Bay Area school districts, and officials of the Division of Special Education, California State Department of Education. In addition, they observed special classes and admission committee meetings. District officials permitted the research to be done in this fashion only if names, dates, and places were omitted. Where citation material is missing for the reason that its inclusion would breach that understanding, reference is made to this note.

[247] An early report of the California Superintendent of Public Instruction notes:

> The 'idiot schools' have had perfect success. The blind feel the light, and the mute gains knowledge. Nor is there any young intellect so degraded but is capable of receiving not only the knowledge to read and to calculate by figures, but deep and abiding sentiments of honor and high rectitude, of conduct that mark the gentleman in after life.

CAL. SUPERINTENDENT OF PUB. INSTRUCTION, THE FOURTH ANNUAL REPORT 47 (1855).

In recent years, however, California's reputation has grown tarnished. The state's treatment of severely handicapped children has evoked considerable criticism because it remains a county or school district option. While 29 California counties have chosen to create "development centers" for these youngsters, about 3,200 in districts served by such centers are currently on waiting lists,[251] and an estimated 5,000-7,000 severely handicapped youngsters live in areas which provide no program.[252] Sparked by the court decisions in ***P.A.R.C.***[253] and *Mills*,[254] the California Association for the Retarded (CAR) has filed suit challenging these exclusions.[255] The projected closing of four state residential institutions for the retarded which serve some 10,448 children and adults[256] has also provoked considerable anxiety among those skeptical that community facilities (which are planned to replace the institutions) will ever materialize. A lawsuit filed in March 1973 seeks to halt the closing of these institutions "unless and until alternate facilities and/or procedures are established which provide equal or superior services, including at least the minimum acceptable level of . . . education . . . ."[257]

The strongest criticism, however, was sparked by evidence of overrepresentation of black and Mexican-American students in classes for

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248. "[P]upils under the age of 21 years who, by reason of marked learning or behavior disorders, or both, cannot benefit from the regular educational program. . . ." CAL. EDUC. CODE § 6750 (West 1959), *as amended*, CAL. EDUC. CODE § 6750 (West 1973).

249. *Id.* § 6870 *et seq.*

250. *Id.* § 6902.

251. Interview of David Kirp with Terry Ross, Counsel to California Association for the Retarded, in Sacramento, Cal., Jan. 19, 1973.

252. Interview with Terry Ross, *supra* note 251.

253. 343 F. Supp. 279 (E.D. Pa. 1972).

254. 348 F. Supp. 866 (D.D.C. 1972).

255. California Ass'n for the Retarded v. Board of Education, No. 237-227 (Sacramento Super. Ct., filed July 27, 1973).

256. Koch & Okada, *Educational Services for the Mentally Retarded Individual in California*, 23 SYR. L. REV. 1075, 1082 (1972).

257. Complaint, Revels v. Brian, No. 658-044 (San Francisco Super. Ct., filed March 22, 1973).

the educable mentally retarded (EMR). Black and Mexican-American parents, incensed that their children were being labeled "retarded" on the basis of culturally biased, English-language I.Q. tests,[258] challenged placement practices in court. In *Diana v. Board of Education*,[259] the state consented to use Spanish-language I.Q. tests in testing Chicano children for placement in EMR classes. Two years later, in *Larry P. v. Riles*,[260] a federal district court denounced the administration of standard I.Q. tests to black students as "concededly irrational"[261] and barred the San Francisco school district from placing black students in classes for the educable mentally retarded "on the basis of criteria which rely primarily on the results of I.Q. tests as they are presently administered . . . ."[262]

The legislature also took action to correct these problems. In 1971, it declared racial and ethnic balance in EMR classes to be state policy,[263] demanding that districts whose EMR minority population was 15 percent or more in excess of the minority school population proffer an explanation.[264] Companion legislation reshaped the information basis on which EMR placement was to be predicated, requiring districts to take into account developmental history, cultural background, and school achievement as well as test-measured I.Q.[265] Two standard deviations below normal on I.Q. tests became the cut-off for admission into EMR classes.[266] The admission process was also changed. Each district was obliged to create an admissions and discharge committee (consisting of the special-education administrator or other designated administrator, a special teacher, a school nurse, and a school psychologist who had examined the child under consideration) to review the panoply of evidence amassed for each case. Parental consent was required for EMR placement.[267]

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[258] For a report giving professional credibility to the Chicano parents' concern, see Cal. State Dep't of Educ., Spanish-Speaking Pupils Classified as Educable Mentally Retarded (1969). The study reported the results of retesting 47 Spanish-speaking children (17 from a rural district, 30 from an urban district) with a Spanish language I.Q. test. The median I.Q. score of the group rose 13 points—from 70 to 81, while individual scores jumped as much as 28 points.

[259] Diana v. State Bd. of Educ., No. C-70-37 (RFP) (N.D. Cal. 1970).

[260] Larry P. v. Riles, 343 F. Supp. 1306 (N.D. Cal. 1972).

[261] *Id.* at 1313.

[262] *Id.* at 1314-15.

[263] Cal. Educ. Code § 6902.06 (West 1973).

[264] *Id.* § 6902.095.

[265] *Id.* § 6902.085. The state elevated the effect of the *Diana* consent decree to a statutory requirement, insisting on testing of all EMR children in the "primary home language." *Id.* § 6902.08.

[266] Over a half century earlier, Los Angeles maintained 13 classes for "retarded" pupils. The definition of "retardation" used then was considerably less precise and included students demonstrating "deficiencies of prior education, slowness of mind, nervousness of temperament, imperfect knowledge of the English language, or similar cause." A. Simmons, A Historical Perspective of Special Education in California, 1973 (unpublished Ph.D. dissertation in University of Southern California library). The current two-standard-deviations-below-normal requirement can be waived only in extraordinary circumstances. Cal. Educ. Code § 6902.095 (West 1973).

Since the educationally handicapped (EH) program was newer than EMR and was not plagued by the problem of racial overrepresentation,[268] its shortcomings were less visible. The California Association for Neurologically Handicapped Children (CANHC), a parents' organization which a decade earlier had pressed for adoption of EH legislation, was concerned, however, about the apparent looseness of the program. While the EH criteria "neurological handicap" and "emotional disturbance" are medically recognized categories, they are also decidedly ambiguous. Each school system which chose to participate in the EH program (558 school districts and counties, enrolling most of the state's children, currently participate) defined these terms in the context of its own organizational needs and educational capabilities. During the first flush of the program's growth, little attention was paid to the definition of "educational handicap." At both the state and local levels, program creation occupied center stage.[269] But as the program grew from 2,000 students in 1964-65 to 55,154 in 1971-72, reported abuses—most notably, the classification as educationally handicapped of any child who provoked classroom difficulties—led the legislature to require annual review of the "appropriateness of the placement,"[270] and the State Department of Education to issue elaborate regulations specifying both program and placement procedures.[271]

Several consequences of this sustained judicial and legislative pressure on the EMR and EH programs are evident. Enrollment in programs for the educable mentally retarded dropped from 57,148 (1968-69) to 38,208 (1971-72);[272] a sizable proportion of that reduction resulted from the reassignment of minority students to regular classes.[273] Exactly what has happened to these children—their experience in transitional programs and their ability to adjust to regular classes—remains unknown. Assessment of the impact of procedural reform in both the EH and EMR programs, the focus of this case study, poses considerable difficulties. When the legislature and the California Department of Education imposed procedural requirements, their implicit intention was to promote better educational decisions. Too little is known about the effects of any educational program to offer confident conclusions concerning the fulfillment of that goal. But reliance on procedures, rather than on substantive programmatic change, suggests that the reformers discerned a link between substance and process. They viewed decisions which centered on the needs of the child, rather than on those of the system, as presumptively better. Through observation, interviews, and the reanalysis of one survey of EH and EMR records and personnel, it is possible to assess how the placement process actually works. This assessment is not encouraging. While most districts have complied with the letter of statutory and judicial dictates, underlying issues—the etiological ambiguity of mild retardation and educational handicap, the needs of the school organization, the vulnerability of many special-education programs—remain unaffected by the introduction of new rules. Informal processes paralleling the formal structure have emerged to accommodate legal dictates and systemic needs. In that accommodation process, the goal of child-centered decision-making has not been fully realized.

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[267] Cal. Educ. Code §§ 6902.05, 6902.85 (West 1973).

[268] In 1971, for example, 9.3% of California's school children were black; the black EH enrollment was 8.5%. Sixteen percent of the school children, but only 10.5% of the EH students, were Chicano. Cal. State Dep't of Educ., Bureau of Intergroup Relations, Racial and Ethnic Distribution of Pupils in California Public Schools, Fall, 1971 10-11 (1972).

[269] Interview of David Kirp with Charles Keaster, Consultant, California State Department of Education, in Sacramento, Cal., Jan. 19, 1973.

[270] Cal. Educ. Code § 6755.1 (West 1973).

[271] Cal. State of Educ., Selected California Administrative Code (CAC) Title 5, Provisions Pertaining to Programs for Educationally Handicapped Minors (Special Education Memorandum EH 72-3, Mar. 3, 1972). The EH program's two-percent limitation has also been criticized by the California Association for Neurologically Handicapped Children (CANHC). A suit challenging that limitation was recently filed in state court. David P. v. State Dep't of Educ., No. 658-826 (San Francisco Super. Ct., filed April 9, 1973).

[272] B. Keogh, L. Becker, M. Kukic, S. Kukic, Programs for Educationally

2. *The Procedural Structure*

Procedures governing placement of students in EMR and EH programs are equally stringent. Both programs require thorough screening of any child considered for special placement by an admissions committee. The EH regulations, for example, insist upon a developmental history of the student, a review of school experience (including classroom observation by a psychologist), tests of academic achievement and aptitude, an appraisal of background factors which might affect the student's performance, a health study, and a statement by the school psychologist that the student is performing below reasonable ex-

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HANDICAPPED MINORS: REVIEW AND RECOMMENDATIONS 4 (1972) [hereinafter cited as PROGRAMS]. The results of the study, which surveyed school personnel and systematically examined school records of 24 "representative" California districts, are cited throughout this section.

[273] CAL. STATE DEP'T OF EDUC., PLACEMENT OF PUPILS IN CLASSES FOR THE MENTALLY RETARDED: A REPORT TO THE CALIFORNIA LEGISLATURE AS REQUIRED BY HOUSE RESOLUTION 262 3 (1971).

pectation.[274] The EMR requirements, while less detailed, are similar in scope.[275] These exacting demands are meant to ensure that schools place in special programs only those children who in fact satisfy the legal criteria for admission. Placements are supposed to be "the most appropriate"[276] and are to identify "clearly defined instructional goals,"[277] enabling the special teacher to develop a strategy which promises to return the child to a regular program as quickly as possible. Initial placement, the regulations declare, should be followed by frequent reevaluations, an annual review by the admission committee and a full case study—much like the initial study—at least once every three years. The California legislation also details the parents' role in the placement process. Before a child may be tested for placement, parental consent—preceded by a thorough explanation of the reason for testing—must be secured.[278] EH legislation permits parents to designate a professional to represent the student before the admission committee; however, the representative's role is wholly advisory.[279] Before a child may be placed either in an EH or EMR class, parental consent—based on what the regulations described as a "complete explanation" of the school's diagnosis and educational plan—is again called for.[280]

While the Special Education Division of the California Department of Education has issued procedural regulations elaborating upon the statutory requirements, it has done little to secure their enforcement. The Division is regulation-minded;[281] its small staff (four state consultants for both the EH and EMR programs) is preoccupied with responding to voluminous local requests for guidance on points of law and on the mechanics of such matters as requesting additional state funds or waivers of statutory requirements. For several reasons, the Division has not undertaken to monitor or evaluate special-education programs. The size of its staff and uncertainties concerning suitable criteria make evaluation difficult. And because the results of evaluations may not always be positive, the enterprise is risky for a division whose political capacity to negotiate forcefully with school districts is decidedly limited.

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[274] CAL. ADMIN. CODE tit. V § 3231.

[275] CAL. STATE DEP'T OF EDUC., POLICIES AND PROCEDURES FOR THE IDENTIFICATION, ASSESSMENT, AND PLACEMENT OF MINORS TO SPECIAL EDUCATION PROGRAMS FOR THE EDUCABLE MENTALLY RETARDED, PURSUANT TO EDUCATION CODE SECTION 6902, INCORPORATING THE PROVISIONS OF SB 33 AND CAC, TITLE 5, REGULATIONS (Special Education Memorandum MR 71-1, Aug. 31, 1971).

[276] CAL. ADMIN CODE tit. V § 3234(a)(3).

[277] *Id.* § 3232(a)(1).

[278] The state's sample version of a written consent form for testing a child states:

> All students placed in an educationally handicapped program must be evaluated by an admission committee. In order to do a proper evaluation, certain specific psychological and medical information must be available to the committee. Thus this letter of permission is necessary to proceed in this evaluation.

CAL. STATE DEP'T OF EDUC., SAMPLE CONSENT FORM (August, 1971).

[279] CAL. EDUC. CODE § 6755.2 (West 1973).

[280] *Id.* § 6902.085. The state's sample EH placement form states: "I (we) have received consultation regarding the learning difficulties of the child and the objectives of the program." The EMR placement form calls for a declaration that the program is "for pupils who have retarded intellectual development."

[281] *See generally* Jaffe, *The Effective Limits of the Administrative Process: A Reevaluation*, 67 HARV. L. REV. 1105, 1113 (1954).

The Division does carry out ad hoc reviews of local practices at the insistence of vocal and well-organized local parents' groups.[282] But the scope of these reviews is limited to the precise subjects of the parents' complaint. In one district treated in the case study, a review which took place in early 1973 focused exclusively on fiscal management questions and did not consider the very critical problem of implementing procedural requirements.[283]

3. *The Procedural Reality*[284]

In each of the five California districts studied,[285] the formal procedural requirements for placement of EH and EMR students have become standard operating procedure. District-wide (or in the largest districts, regional) admission and discharge committees hold meetings, although reports persist of children placed in special classes without benefit of admission committee review. Signed parental consent forms are routinely solicited prior to placement, even though gaps in the schools' records could be found. But in each district, determinations that a child be labeled "special" and the decision as to which special program he[286] should be placed in are made informally. The formal process usually functions to ratify those decisions.

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[282] In one case, the parents' group sought to pressure the Division into responding by contacting state legislators and publicizing their grievances. Interview with Robert Whitenack, Director of Special Education, Berkeley Unified School District, in Berkeley, Jan. 15, 1973.

[283] The Division's proposed California *Master Plan to Special Education* [see text accompanying notes 305-08 *infra*] would markedly change its role

[284] See note 275 *supra*.

[285] The five districts studied were Berkeley, Mill Valley, Oakland, Richmond, and San Francisco. While these were not selected as "representative" but because they were close at hand, variations among them in terms of racial and social class mix of the student population, and size and administrative structure of the district appear sufficient to warrant making some general conclusions on the basis of the sample. District officials permitted extensive observation of special education classes and admission committee meetings on the condition that observations not be linked to specific districts or individuals. For that reason no further identification of the source of observations is reported.

[286] "He" is used advisedly. The survey of California's EH and EMR programs

This section describes the workings of a "typical" informal system. Such an approach risks sacrificing complexity for coherence; it minimizes the considerable differences in style and behavior among (and even within) the five districts studied. In one district, for example, the EMR director runs the program with an iron hand, insisting both on what the director terms the "integrity" of the program and strict adherence to legal procedure. In another, the atmosphere is strikingly informal; procedural regularity is sacrificed to flexible educational programming. Yet despite these differences, the process by which a child comes to be recognized as "special" and the organizational pressures which foster such a process appear not to vary greatly.[287]

a. *Identifying Special Children*

The suspicion that a child may belong in an EH or EMR class first arises in the regular classroom setting: a particular student may fall hopelessly behind his classmates; sit mutely in class; or, most typically, cause classroom disruptions. The teacher attempts to cope with such aberrant behavior by snatching small amounts of time for special instruction, trying to lure the child into class discussion, or imposing a firm disciplinary regime. If the problem persists, the teacher may discuss it with colleagues who previously taught the student or seek help from the principal. If the problem seems intolerable—and definitions of what is tolerable deviation from expected behavior vary markedly from teacher to teacher—the teacher may ask the principal to have the child tested for special placement.

If the principal's primary concern is to support the regular teaching staff, he is likely to call in the school psychologist for testing.[288] But other factors may influence his decision: his political power within the school system and the chances of his recommendation prevailing in a dispute with special-program personnel; the availability of special resources in the district; and the feasibility of managing the problem informally by transferring the student to another regular class or placing him on reduced-day instruction in the same school. If, for example, the principal knows that the district's special classes are filled

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notes that 70.1 percent of the students (58.2 percent in EMR, 80.9 percent in EH) are male. PROGRAMS, *supra* note 272, at 108.

[287] "Appear" is used deliberately, for respectable data are hard to come by. As one group of student commentators has noted, "The [Southern California] districts studied lacked an astonishing amount of material essential to a proper evaluation . . . ." K. Delay, S. Heath, L. Ihara, J. Jacks and L. Wagner, California's Program for Educational Minors: A Study 16 (1971) (available from Program in Public Policy Studies, Claremont, Cal.).

[288] Robins, Mercer, and Meyers in *The School as a Selecting Labeling System* 5 J. SCHOOL PSYCHOLOGY 270 (1967), report that 90 percent of all special education referrals are made by the teacher-principal team.

for the year, he may ask for the teacher's patience, offering her a more compliant group in the coming year.

Some principals are chiefly concerned with the welfare of the crisis-provoking child. They may have misgivings about the competence of the special teachers who serve the school's population or they may believe that many misconduct problems can be corrected within the regular class. But unless the teaching staff shares such attitudes, the principal cannot readily act on them. In a school whose teachers cannot or will not respond to the varied challenges that some students regularly pose, it is politically difficult for the principal to reject requests for special placement. A principal who, in the words of one teacher, "can get things done" is one who solves problem cases by removing them from the regular system's jurisdiction and responsibility.

As the law contemplates, the teacher-principal conference generally precedes special-class placement. In some schools, however, special teachers are willing to accept (on a trial or part-day basis) students who have not been reviewed by special-education professionals. Such an approach may well be pedagogically sound in some cases. Where, for example, a child has difficulty in distinguishing certain letters but can otherwise cope in regular classes, a good special teacher can often quickly remedy the problem. Bureaucratic red tape is thereby circumvented, help provided with dispatch, and the possible stigmatization of a formal label is avoided. In one district studied, EH small-group sessions regularly include EH and regular students, an arrangement that appears to benefit both groups. But in ghetto schools, where the perceived need for special services routinely outstrips their availability, ad hoc placements tend to be made for more children for longer periods of time and for reasons less pedagogically laudable. One school psychologist who works in several ghetto schools reports: "I've never even evaluated half of the EMR students in one school. They just wind up in the program."[289]

If the principal and teacher concur that a given student should be placed in an EH or EMR program, the school psychologist is called in. His influence is dominant. While nonpsychological evidence (a health history and home background study, for example) is legally required, the psychological evaluation is crucial. In order to justify special-program placement, the psychologist must find the student to be either retarded (performing two standard deviations below normal on an I.Q.

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[289] In another school in the same district, a student assigned himself out of EH program. He decided that he was ready for regular work, and is performing admirably; as far as the admission committee is concerned, he is still an EH child. See note 275 *supra.*

test) or doing less-than-expected work. Psychologists, like everyone else attached to special programs, are overworked; they are assigned to several schools and serve as many as 5,000 students. While they are theoretically accessible to all the children in a school district, the demands made upon them to identify and screen special-program children often mean that they only have time to do individual psychological assessments. Since they are assigned to more than one school and frequently switch assignments, they have little opportunity to work regularly with particular classroom teachers or come to understand variations in school culture. Moreover, psychologists view themselves as most competent to do individual evaluations. They feel they lack the skills to work in the classroom setting and the time to follow through on any advice which they might give. From the teachers' point of view, psychologists are often perceived as outsiders whose advice is offered condescendingly. A survey of EH and EMR teachers in 24 representative California districts reported that while three-quarters of special teachers viewed psychologists as "helpful," they said that testing represented "the major type of assistance. . . . Diagnosis, psychological support, classroom observation, counselling, and program recommendations were all relatively low frequency responses."[290]

b. The Parents' Role

Before the psychologist can test a student, someone in the school—usually the classroom teacher or a social worker—secures parental permission. Although parental acquiescence is theoretically preceded by an explanation of the testing procedure and the school's reason for requesting the tests, permission is often secured without parents' knowing what they are consenting to. The permission is but one document among several that parents are asked to sign. Sometimes "to save time," as one psychologist put it, permission for placement is obtained during the same visit as permission for testing, even though the school does not know into what special program (if any) the student should be placed. Some parents resist giving permission for testing or placement. Refusals by black parents are estimated to run as high as ten percent, especially in the EMR program. From the viewpoint of special personnel, the model parent neither resists nor discusses—he does what the school asks him to do without challenging the rightness of the professional's judgment. Parents who do raise questions or object to school-recommended placements are frequently dismissed as "nuts" or "trouble-makers." While 88 percent of California's EH and EMR teachers viewed parents as "no problem," only 14 percent considered them helpful,[291] and just 6 percent recommended that parents' role in special education be increased.[292]

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[290] PROGRAMS, *supra* note 272, at 79, 82.

Special educators have developed strategies to cope with the relatively rare instances of parental resistance. The reluctant parent is barraged with evidence of his child's poor schoolwork as proof of the need for special school attention. If that fails, school professionals can threaten to leave a child back or, more distressingly for some parents, put the student on reduced-day or home instruction. The persistent parent who is convinced that his educational objections should prevail does, however, have some political resources at his command.[293] He can bombard the special-education office with phone calls and visits, and in general make such a nuisance of himself (in the eyes of the special educators) that peace on any terms becomes appealing. He can call upon parent groups such as CANHC and CAR for help.[294] The threat of a lawsuit may encourage the district to buy him off.[295] Parents can also press their grievances upon the state education department; while that agency does not routinely monitor programs, it has occasionally responded to parental pressure by conducting an investigation.

c. *The Admission Committee*

i. How decisions are made. The school district's admission committee renders the formal placement decision, relying primarily on the psychologist's report, classroom and home background information, and pertinent medical evidence. In some districts the committee does attempt a thorough evaluation of the children who come to its attention. In three of the five districts studied, however, the decision in fact resulted from bargaining which took place prior to the committee meeting.

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[291] *Id.* at 85.

[292] *Id.* at 90.

[293] In the fall of 1972, one of the districts studied established parent-school-community task forces, whose mandate included review of all special-education practices. In operation, however, the task forces functioned quite differently. Meetings were dominated by powerful veteran special-education officials. Their presence prevented the task forces from considering any basic program changes and cut them off from significant parent or community organization contact. While some of the task force recommendations may ultimately be adopted, parent members concluded privately that only an organized and direct appeal to the board of education—such as California Association for Neurologically Handicapped Children (CANHC) had undertaken—promised any substantial change. See note 275 *supra*.

[294] While the California Association for the Retarded (CAR) and the California Association for Neurologically Handicapped Children (CANHC) tend to focus on statewide legislative and administrative issues, those groups or their local affiliates have on occasion aided irate parents in negotiating with local school officials. See note 275 *supra*.

[295] In one of the districts studied, a parent was able to obtain an educational voucher for his child by threatening to sue the district. Fear of litigation over classification practices, prompted by the increasing number of lawsuits, is pervasive in California. One EMR administrator volunteered the fact that his placements were "lawsuit-proof." See note 275 *supra*.

Those involved in the evaluation process—the psychologist, the school social worker, the principal, and the regular teacher—frequently meet informally to resolve any differences. For each of the participants consensus is preferable to a public disagreement, for a prior consensus denies the committee, most of whose members have no first-hand knowledge of the particular child, any effective decision-making role and removes the possibility of confrontation among professionals. Although this approach tends to limit the function of the admission commmittee in a fashion not contemplated by the legislature, the informality that it preserves is not necessarily bad. Since no special-education supervisors are present to monitor the discussion, more free-wheeling and candid exchanges may be possible. Yet informality may carry a price. Because the collegial, professional relationships of these participants, of which these meetings form only a part, depend to some extent on goodwill and reciprocal provision of support, the plight of a particular child may become less important than developing satisfactory stays against confusion.[296]

Two styles of admission committee behavior became apparent in the field studies. In the three large districts studied, the committee devoted an average of two and one-half minutes to each case presented. That brief time was sufficient for the psychologist to read his report—which described children in such terms as "talkative and distractable," "timid but emerging," "having conflict of values with those of the school," and "suppressed ego and development complicated by neurological deficits"—and for the psychologist to attach the appropriate label, *e.g.*, "minimal brain dysfunction," "neurological, hyperkinetic." As one special-education director stated: "We are not a decision-making board. We just need to put the thing into legal language." In these three districts, then, the admission committee simply ratifies decisions already reached informally. In two other districts the admission committees attempt a more thorough review. Disagreements among school professionals are argued out at the conference; rejected recommendations and divided votes are not uncommon. Yet even in those meetings the data on each child are simply too scanty for careful, reasoned judgments; whether space in a particular program is in fact available frequently proves the determinative factor. As one psychologist noted in exasperation: "We've got to get our signals straight. In [another] school, they're putting kids into the EH program just like those we're removing over here." The EH supervisor responded, "The schools will do whatever they can get away with." The vagueness of the EH criteria encourages such variation; it also enables the admission committee to conclude that a child who "doesn't fit anyplace else" is, by definition, educationally handicapped.

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[296] Since we were unable to sit in on these sessions during the field inquiry, these remarks should be treated as speculative. See note 275 *supra*.

Even the most conscientious admission committee cannot fully carry out its job of making appropriate placements. For one thing, the school organization does not give it sufficient information. Perhaps, given the state of the educational art, sufficient information cannot, in many cases, be collected. Yet the admission committee meetings do serve a purpose. They afford participants the opportunity to air grievances about particularly difficult children and about parents who, by refusing to send their truculent youngsters to residential institutions, take up valuable EH spaces. Much like other professional gatherings, they give school professionals an opportunity to impress their superiors. In one district embroiled in a series of controversies concerning the EH program, the special education director treated the meetings as a means of assessing the caliber of the system's school psychologists.[297]

Although parents are legally entitled to send an "advisory" representative to the EH (but not the EMR) admission committee meeting, that right is seldom exercised. In the estimation of school officials, this confirms that parents are not interested in what the school is doing. But unless a parent has read the pertinent legislation, he would be unaware of this right; it is not routinely revealed to parents. Special educators, while expressing their willingness to meet with a parent or representative at the admission committee, fear that the presence of an outsider might force bargaining further underground. The committee's handling of children, one program supervisor remarked, is "just too impersonal for the average person to understand . . . it would appear cruel." The presence of such an outsider might also pose a threat to the committee's usual style of operation and, more basically, to the credibility of its decisions.

ii. Parental consent and educational "prescription." After the admission committee reaches its decision, parents are to be informed of its recommendation and asked for their written consent.[298] This requirement is designed to afford parents the opportunity to discuss educational specifics—not "is my child 'exceptional'?" but "is this the best program for him?" In the committees whose operations were observed, however, consent had uniformly been secured prior to the meeting. Indeed, one special-education director in a district which devotes minimal attention to individual cases at the committee meeting refused to consider a case until the school psychologist had obtained parental permission for placement. The permission-before-decision approach gives the committee a blank check to place a student wherever it wishes, and negates any significant parental role. Even the language of the consent form which parents sign discourages candid discussions between parents and educators. Despite state admonitions for clarity, one district asks parents to consent to "LDG placement," which only the most astute parent will realize permits placement of their child in a learning disability group, a part-day program for educationally handicapped children.

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[297] These are, in Robert Merton's terms, "latent functions" of the admission committee. R. MERTON, SOCIAL STRUCTURE 51 (2d ed. 1957).

[298] CAL. EDUC. CODE § 6902.085 (West 1973) (EMR); *Id.* § 6755.3 (EH).

As local districts interpret the law, parental consent must be obtained only for the first special placement. A student placed in a part-day special class can subsequently be reclassified as a full-time special student or placed on home instruction without further parental involvement. While the parent is empowered to withdraw his consent, few parents either know about or exercise such a right. In short, the written parent-consent requirement does not noticeably affect the districts' decision-making processes. In most school districts obtaining it has become routine. Where parental resistance can be anticipated, school districts may even assign students to special classes without consent. For example, while a survey of 24 school district EMR files indicates that 79 percent of all children enrolled in EMR programs had signed, parent-approval forms in their files, in school districts with high concentrations of black children the consent figure dropped to 55 percent.[299]

The admission committee's job ends with the program placement decision. Although the committee is required by state regulations to develop educational prescriptions—to indicate with some precision not only what problems a child is having, but also what might be done to overcome them—such advice either is not offered or is rendered at a useless level of generality (*e.g.*, "improve reading skills," "improve writing skills," "small-class instruction"). There is no effort to delineate specific learning disabilities or to construct learning strategies which will be most effective. In the California survey, only 27 percent of EH and EMR teachers reported that prescriptions were "useful," while 42 percent had never received any prescription.[300]

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[299] PROGRAMS, *supra* note 272, at 132. School psychologists suggest that one reason for failure to secure parent approval is difficulty in contacting parents who work during the day, move frequently during the school year, and are distrustful of any contacts with the public school.

[300] *Id.* at 56.

Given the heavy time burdens which admission committee meetings impose on special educators, it may be unrealistic to expect collective attention to issues more complex than placement. But the committees' apparent unwillingness or incapacity to instruct the special teacher causes considerable frustration. In one admission committee, the EMR supervisor turned to a special teacher and asked whether she could handle a particular child. "Sure," the teacher replied, "if you can let me know what you expect me to *do* with him." Lacking any assistance, pedagogical decisions are made in "eclectic"[301] fashion by the teacher, the one professional in the special-education system seen as responsible for what happens in the classroom.[302]

While California's EH and EMR regulations treat initial placement as only one stage in a constant, ongoing process of review, the press of new business frequently means that the initial inquiry will be the only instance when a case receives serious consideration. There are, however, counter-pressures which do create opportunities for reevaluation. Since the EH program is, by statute, limited to two percent of the student population, the demand for new placements encourages "de-certification" of EH students in districts which have already reached that ceiling. The retesting of all EMR students, mandated by law, has reduced enrollment in that program. Some children do flourish in the smaller, more individualized EH and EMR classes, and are eventually recommended for discharge from the special program. Yet 40 percent of the EH and EMR students surveyed had not been evaluated since their placement.[303] The typical educationally handicapped child has been enrolled in a special program for 2.30 years. His counterpart in the educable mentally retarded class has been enrolled for 4.53 years; 14 percent have been in EMR classes for more than eight years.[304] These children have in fact become "special children"; little systemic incentive exists to treat them otherwise.

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[301] *Id.* at 46.

[302] *Id.* at 20. This pattern also discourages the thoughtful regular teacher from seeking admission committee help with a particularly difficult child. One such teacher frequently brought cases to the committee, only to be told: "It sounds like you're doing a good job. Keep up the good work and let us know how it is going." Such a teacher will have already tried all logical techniques, and hopes that the committee's specialized expertise will provide useful advice. The only alternative which the committee can offer is special placement; it lacks the capacity to support efforts which maintain difficult students in regular classes. If the child is not "exceptional" within the committee's understanding of that term, he cannot be assisted by the committee.

[303] *Id.* at 140. Of those who were reevaluated, 60 percent were reviewed by the admission committee, 22 percent were retested by school psychologists, and 17 percent were reviewed by classroom teachers. *Id.* at 140-41.

[304] *Id.* at 126. Most children are not classified as retarded until third or fourth grade. Thus the longest possible stay in an EMR class is eight or nine years. Since the survey sample included students still in elementary school, it suggests that a sizeable (and undetermined) percentage of EMR placements are in fact permanent.

4. *Prospects for Change: The California Master Plan for Special Education*

Those who criticize special-education programs in California do so for a variety of reasons. They score the present tangle of special programs whose mandates are both uncertain and overlapping, and whose financing seems even capricious. They note the absence of any systematic program evaluation, or even the collecting of data upon which sensible evaluations might be conducted. They charge the state with failure to provide some form of education to all children by continuing to exclude thousands of handicapped youngsters most in need of assistance. They worry about the stigma associated with certain special-education labels, notably that of "retarded." They continue to be unhappy about the marked overrepresentation of black and Chicano students in programs for the mildly retarded. And they are concerned about the nearly complete separation of regular and special education.

In response to these criticisms leveled at special-education programs, California's State Department of Education has been working for the past two years with various local school officials and university experts to construct a "California Master Plan for Special Education."[305] The Plan proposes sweeping changes in the financing, governance, and operation of those programs. Categorical programs—the educationally handicapped program, for example—are replaced in the Master Plan by a single broad category encompassing all children who need special help. Districts and counties are charged with the task of undertaking comprehensive planning for these youngsters. They are required to develop a variety of approaches ranging from the utilization of "resource teachers" working in regular school settings to the operation of special classes and institutions. The Master Plan calls for regular evaluation, not only of each child but also of school programs. It insists upon "maximum interaction with the general school population . . . ."[306] and encourages "the return of children with exceptional needs to the regular school program in the shortest time possible . . . ."[307] requiring districts to provide "explicit due process procedures"[308] for those who feel they belong in (or out of) special programs. Primary responsibility for operating and evaluating special programs is left with the districts and counties; the state assumes the role of monitoring and supervising evaluation efforts.

The Master Plan is by no means assured of adoption. It will cost more than present arrangements, and the California legislature has not been noticeably inclined to increase special-education funding in recent years. It contemplates major changes at each administrative level—local, county, and state—and the prospect of those changes has already elicited resistance. By removing programmatic labels, it risks offending parent groups which have sought to protect the interests of their children through insisting on clearly demarcated programs. But even if the Master Plan is approved in precisely its present form, the effect it will have on the informal aspects of special-education placement is far from clear. The very flexibility it seeks to implement may well be used by local districts as a device to maintain practices which have functioned tolerably well. Neither the language of the Plan nor the historic role of the state special-education division suggests that such efforts would encounter substantial resistance. In short, the proposed Plan speaks of change without providing any real incentives to accomplish it.

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[305] CAL. STATE BD. OF EDUC. & CAL. STATE DEP'T OF EDUC., PROPOSED CALIFORNIA MASTER PLAN FOR SPECIAL EDUCATION (September 1973).

[306] *Id.* at 14.

[307] *Id.* at 15.

[308] *Id.* at 17 & 27.

Such a dour view reflects an understanding that school classification practices did not spring up by accident, but, rather, emerged in response to perceived organizational needs. It may well be, as one student of organizational behavior suggests, that "[c]areful targeting of major factors that support routines—such as personnel, rewards, information, and budgets—can effect major change over time."[309] The Master Plan, if adopted, may also enable those in the special-education system who presently chafe under its rigidity and compartmentalization, who view their professional roles as compromised by organizational and fiscal constraints, to create alternative arrangements. But as to that possibility—and the durability of the informal organizational behavior described in this section—it is too early for reasoned prediction.

D. *The Case Studies: Some Concluding Observations*

These three case studies offer no precise measure of the impact of laws which secure either substantive benefits (the right to an "appropriate" education) or procedural protection for children viewed as handicapped. The very design of the inquiry (which considers both court decisions and legislation, and assesses quite different kinds of handicapping conditions) as well as the avowedly anecdotal nature of the research underscore the need for caution in interpretation. But some conclusions—more accurately, ideas which warrant further consideration—can be advanced.

First, change in legal standards, whatever its source, does not ensure altered school behavior. The limitations of judicial policy-making—stemming from, among other factors, a structural inability to shape disputes, control resources, select among policy alternatives, or monitor or readily revise rulings to adjust to altered experience—have been frequently remarked.[310] Legislatures are also subject to many of these same limitations. And both legislatures and courts depend on others—state and local school officials and their subordinates—to effectuate their mandates. To the extent that standards promulgated by either branch of government seem impractical or unfeasible to school personnel, those standards may be ignored or altered in operation.

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[309] G. Allison, Essence of Decision 94 (1971).

Second, some changes are easier than others to accomplish through legal mandate. In Pennsylvania, for example, a coordinated effort by education officials and an active parents group identified 15,000 children who had previously been excluded from public schools. The accomplishment is notable but its significance should not be overestimated. Finding excluded children does not require school systems to undergo organizational change; rather, it calls for a clever advertising campaign and for funds to conduct a school census. More basic changes, such as implementation of procedural safeguards or the insistence on "appropriate" educational placement, come more slowly. They require a reshaping of the special-education program and a reexamination of the range of regular school offerings.

Reform also becomes more difficult to accomplish when more than one agency's practices are called into question. This is typically the case with respect to the severely handicapped, a group historically excluded from the public schools and provided with only minimal care by state welfare agencies. The judicial command that these organizations "coordinate" their activities masks a host of bureaucratic difficulties.

Third, resistance to change does not result from the obduracy of misguided school officials. The sorts of changes that *P.A.R.C.*, *Mills*, and the California legislative reforms contemplate would require wholesale reevaluation of school structures and organizational roles, and consequently threaten everyone in the system. The special-education program seeks to protect its status by rigidly distinguishing its task from that of the regular program. The regular program relies on special classes to handle those with whom the classroom teacher cannot cope. Special teachers, isolated from school decision-making both with respect to individual cases and school policy, feel reluctant to enter the regular school domain to which they have historically been denied access. The school psychologist, whose days are presently taken up in giving I.Q. tests to crisis-provoking children, lacks both the time and the skills to offer sustained attention to a greater variety of school problems. The principal needs to satisfy teachers' demands to remove those who create classroom disorder. The proposed reforms, if implemented, would require alteration of each of these patterns of behavior.[311]

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[310] *See, e.g.*, Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined*, 35 U. CHI. L. REV. 583 (1968).

While the status quo is not wholly praiseworthy, it does offer a functional solution to those charged with teaching and administering schools. If "appropriate" placement—the *Mills* and *P.A.R.C.* requirement—can be viewed as demanding only a choice among existing alternatives, the status quo is generally preserved. If California's admission committees, designed to provide a procedure which makes "appropriate" placements more likely, can operate to confirm decisions made at a less visible level, they need not enlarge the responsibilities which schools have historically undertaken. Although these practices may subvert the ultimate goals of the judges and legislators, they may also constitute the only way school officials know how to do their job.

Fourth, the case studies indicate some of the conditions needed to bring about the ultimate goals of legal change. Clearly, pressure stronger than the mere existence of a legal requirement is required. Parent groups may exert such pressure; its force and direction will depend on whom the parent group represents, and on whether its commitment endures over time.[312] If special educators are securely positioned in the school system, they too may push for reform. But such strength is most likely to result from system-wide concurrence concerning the goals of the special system, and those who have it may well resist reform. A court-appointed special master possesses sufficient clout to affect program direction, if the impermanence of the position does not encourage bureaucrats to wait him out. A strong commitment by school administrators, particularly at the state level, to adhere to regulations may induce at least formal rationality. None of these factors ensures that marked organizational change will occur. But they do provide support for incremental, limited reform. Without the presence of at least some of these elements, legally-mandated alteration in special-program practices may not have even nominal effect.

Fifth, the impact of law may vary with the nature of the group whose claims are being pressed. Children with mild and difficult-to-diagnose handicaps make demands upon the school quite different from those advanced by children with more potentially debilitating problems. Variations in children's backgrounds are similarly pertinent: a child detached from any family life—living on the streets or in a succession of foster homes—may be harder for schools to cope with than a nominally similar child whose family is deeply concerned about his well-being. These subtleties are ignored by court decisions such as *Mills*, which treat all children excluded from school, whether because they are autistic or delinquent, as posing common problems. Common remedies—whether procedural or substantive in nature—may miss the mark in particular kinds of cases.

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[311] *See generally*, Wildavsky, *The Self-Evaluating Organization*, 32 PUB. ADMIN. REV. 509 (1972).

[312] *See* C. DES JARDINS, HOW TO ORGANIZE AN EFFECTIVE PARENT GROUP AND MOVE BUREAUCRACIES (1971).

Sixth, these case studies focus on the education of exceptional children, and that focus may well be too narrow. Defining an "appropriate" education ultimately must be a task which encompasses the entire school system. The rigidities and constrained choices which epitomize special education in even the most progressive states also characterize regular instruction. The particular problems associated with special education may simply be unresolvable unless attention is directed to organizational factors which make present practices appealing to school personnel. Such sweeping reform is, however, nowhere at hand. In the meantime, it is worth considering whether any narrower intervention, couched in procedural terms, merits serious consideration. The concluding part of this Article addresses that question.

III

EXPLORING PROCEDURAL MODES OF SPECIAL CLASSIFICATION

Both the *P.A.R.C.*[313] and *Mills*[314] decrees established procedural requirements to protect and support substantive rights, and these requirements were discussed in fairly standard due process language. Detailed procedures have likewise been prescribed by regulation and statute in California. But procedural mandates can be frustrated by organizational inertia, and our field studies suggest the need for further examination of the usefulness and limitations of various procedural modes. This Part will explore and suggest tentatively what procedures should be adopted for classification, in light of the lessons learned from the Pennsylvania, Washington, D.C. and California experiences. Our point of departure, however, is not the *P.A.R.C.* and *Mills* problem of complete exclusion of children from the public school system. Instead, this Part will explore broadly the whole process of classification by which children are identified as having special-education needs and placed into special education programs.

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[313] Pennsylvania Ass'n for Retarded Children v. Commonwealth, 334 F. Supp. 1257, 1260-61, 1266 (E.D. Pa. 1971); 343 F.2d 279, 303-05 (E.D. Pa. 1972).

[314] Mills v. Board of Educ., 348 F. Supp. 866, 880-83 (D.D.C. 1972).

We realize that the inclusiveness of this approach entails certain hazards, as there is a risk that generalized discussion of "procedures for special classification decisions" will suggest that there is one best set of procedures. We emphasize, however, that different procedures may be appropriate for different special-education decisions, and that procedures must be tailored to the requirements of each program.

The discussion will begin with some general observations about due process and its application in the context of classification for special education. We will note some of the main reasons for limiting proceduralization and, hopefully, will produce a healthy skepticism about the appropriateness and utility of applying strict notions of procedural due process to classification decisions. We then will describe a representative "model" of procedural due process as it has been developed judicially and will indicate in more detail the advantages and drawbacks of applying this classical model to special education decisionmaking. Various alternative, modified forms of due process will then be suggested—for "due process" is a concept of almost limitless elasticity. Although the term can signify a relatively fixed set of procedures (the classical due process model), it can also encompass any process that is considered appropriate or "due" in a particular setting. Very often what is "due" means what is constitutionally required; however, as we do not consider our inquiry to be bound by constitutional limits, we will ultimately use "due process" to signify whatever procedure seems most likely to achieve desired ends at an acceptable cost, in the light of all appropriate considerations. Finally, Part III concludes with a brief treatment of various related matters that cannot readily be assimilated into a discussion of a due process model and alernatives.

We would like to anticipate one of our most fundamental conclusions because it is a critically important guide to all that follows: Based on what we now know, no one set of procedures or one procedural model appears to be appropriate for all special-education decisions. On the contrary, there is a virtually unlimited number of choices, each of which involves particular costs and benefits that must be weighed against each other. To determine costs and benefits, various fact and value judgments must be made about the consequences of any classification decision. For example, a determination that classifying a child as emotionally or mentally retarded creates a serious stigma is a factual judgment; a determination that it matters that such stigmatization occurs is a value judgment. Factual conclusions will, of course, vary from one district to another—for example, the retardation label will be much more stigmatizing in some communities than in others; and certainly values will differ both within and without any community. This raises the question of whose values should govern—who should have the power of choice. Are values to be determined at a national, state, or local level?—by the usual political machinery, by some groups or professionals, or by the courts? We do not attempt to answer these questions, but do try to isolate and examine these and other considerations that must underlie the choice of appropriate procedures.

A. Due Process: Costs and Benefits

What constitutes "due process" is flexible and highly dependent upon context. Justice Frankfurter, discussing the constitutional dimensions of due process, described the nature of the concept and the many considerations that must underlie the prescription of proper procedures:

> Fairness of procedure is "due process in the primary sense." . . . "[D]ue process" cannot be imprisoned within the treacherous limits of any formula. . . . Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment. . . . The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment. . . .[315]

Procedural due process in its most classical form is represented by the procedures designed to prevent a criminal defendant from being wrongfully convicted.[316] But procedural due process has also been applied in a variety of contexts outside the criminal law—to juvenile justice,[317] discharge from government employment,[318] student discipline,[319] revocation of motor-vehicle licensing,[320] and distribution of welfare benefits.[321] In all these contexts, due process is invoked because of two fundamental elements: (1) government action threatens to cause deprivation of a vital interest such as personal freedom, college enrollment, or welfare payments; and (2) the facts which might lead to the deprivation are disputed (*e.g.*, whether the defendant "broke and entered" at night, whether the student participated in an unlawful demonstration, or whether the welfare recipient had received income in excess of permitted amounts). Due process, then, requires some proceeding that will protect the individual's asserted interest by ensuring careful determination of controlling facts. Due process proceedings are also designed to achieve other goals: to ensure that facts will be measured against appropriate criteria; to guarantee that decisions will be made carefully and impartially; to afford opportunity for participation to affected persons; and to preserve public confidence in the integrity of governmental decision-making.

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[315] Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 161-63 (1951) (Frankfurter, J., concurring).

[316] *See, e.g.*, Pointer v. Texas, 380 U.S. 400 (1965); Gideon v. Wainwright, 372 U.S. 335 (1963).

[317] *In re* Gault, 387 U.S. 1 (1967).

[318] Perry v. Sindermann, 408 U.S. 593 (1972); *see* Greene v. McElroy, 360 U.S. 474 (1959).

[319] Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961).

[320] Bell v. Burson, 402 U.S. 535 (1971).

[321] Goldberg v. Kelly, 397 U.S. 254 (1970).

To determine whether procedural due process is a helpful concept in the context of special education classification, we must first examine the nature of the interests affected by a classification decision and the type of factual determinations that must be made. In the other situations mentioned above where procedural requirements are imposed, it is clear that an adverse factual determination will result in the invasion of a vital interest: for example, a finding that a defendant wrongfully entered a house will result in his loss of freedom. But whether governmental action classifying a student as needing special education will result in the infringement of a vital interest is often unclear. If a special education decision has the effect of depriving a student of all opportunity for public schooling, a vital interest is invaded and the case for extensive procedural protection is strong.[322] If the claimed effect is harmful stigmatization, again there is a substantial injury warranting procedural safeguards.[323] But if the complaint of the student and his parents is that reassignment to a special program deprives the child of "regular" education, it is not clear that there is any deprivation of a vital, protectible interest. It is clear that the child is given something different. But is it more, or less, or is the change neutral? Transfer to a special program can be regarded as conferring a valuable benefit: the child receives arguably more meaningful, and often more expensive, education, and he may receive nonacademic advantages such as removal from an anxiety-ridden school environment and stimulation from a new one. But the state's or school's claim that special assignments are beneficial is self-serving, and its characterization should not be accepted as conclusive any more than any other state-imposed limitation on freedom that is justified as being for the good of the affected person.[324] In fact, a special-education program is likely to offer a narrower, less demanding curriculum than the regular program, leading to more limited life choices for special students. The curriculum may be taught by teachers unable to get regular jobs, and it may have no measurable beneficial effect on the student's academic performance. The student may suffer nonacademic detriment by losing friends and familiar teachers and experiencing dislocation; or by incurring the inconvenience of a longer bus ride or the inability to come home for lunch. Thus, whether a classification decision (that does not exclude or stigmatize) is beneficial, detrimental, or neither will depend upon a wide range of variables including the accuracy of the evaluation of the child, the educational soundness of the special program, the adequacy of its resources, and the attitude of the child's parents.

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[322] *See* Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972); Pennsylvania Ass'n for Retarded Children v. Commonwealth, 334 F. Supp. 1257 (E.D. Pa. 1971) (jurisdiction retained), 343 F. Supp. 279 (1972) (separate opinion with amended stipulation and amended consent agreement). *See also* Brown v. Board of Educ., 347 U.S. 483 (1954); Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). *See generally* Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545, 575-76 (1971); Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305, 373-89 (1969). To compare exclusion from school with termination of other government benefits see Goldberg v. Kelly, 397 U.S. 254 (1970). *See generally* O'Neil, *Of Justice Delayed and Justice Denied: The Welfare Prior Hearing Cases*, 1970 SUP. CT. REV. 161.

[323] *See* Board of Regents v. Roth, 408 U.S. 564, 573-74 (1972); Wisconsin v. Constantineau, 400 U.S. 433 (1971); Jenkins v. McKeithen, 395 U.S. 411, 427-28 (1969); Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951).

A child is harmed—his vital interest in the best available education is invaded—only when in the light of variables such as these the decision made is not "correct." Since it is not clear, therefore, that substantial deprivation will result from a classification decision, there undoubtedly will be resistance to incurring the costs of affording procedural safeguards to a child and his parents.

Not only is the existence of protectible interest in classification decision-making more ambigious than in the typical context where strict procedural requirements are imposed, but the nature of the questions that must be answered is unlike the decisive factual questions normally raised when a vital interest is threatened. Typically, a due process proceeding is used to determine the truth when there is a choice between fact *A* and fact *B*, the only two possibilities. The defendant either was in Los Angeles on May 12, or he was not; either he committed murder in the first degree, or he did not. Due process procedures—notice, hearing, right to cross examine—are specifically designed for determining the truth when such either/or questions are in issue.

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[324] *Cf.* Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545, 558, 571-72 (1971).

Ideally, the special-education decision answers a question that is strikingly different from a yes/no fact question. When special classification is considered, the question should be what is the educational program that would best fulfill this child's educational needs? This question plainly does not ask for a choice between only two possible alternatives; it asks for a selection of the most appropriate from an unlimited range of alternatives. It requires a judgment about a plan of action—a managerial decision. This is not the sort of problem that due process procedures are designed to resolve.

In reality, however, educational decision-makers do not have an unlimited range of alternatives to choose from, and the questions actually asked and answered do not differ so dramatically from those resolved in adjudicative proceedings. Classification decisions involve the "fitting" of all children into a limited number of categories on the basis of the answers to three distinct questions: (1) Does the child need "special education" that cannot be provided in the "regular" program? (2) If so, what are the child's educational needs? (3) Given the present limited array of programs and resources, which one best meets the child's needs?[325] The first of these questions is like those typically answered through due process procedures: it asks for a yes/no determination of fact. And before one can properly answer any of these three questions, many subordinate factual issues must be resolved. For example, the decision-maker might inquire: Does the child demonstrate an ability to get along in a social context? Was the only basis of special classification the result of a standard paper-and-pencil test? Are more blacks than whites with comparable records classified as special? Such subordinate questions may be crucial to the final classification decision, and often do require a choice between conflicting assertions of fact or a judgment whether some fact is important.[326] These questions clearly could be resolved in adjudicative proceedings, even if the ultimate judgment about classification did not lend itself easily to solution by adjudication. The result would be "more correct" facts on which to base a judgment and increased public confidence in the decision-making process.[327]

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[325] The authors do not claim that present practice explicitly divides the classification decision into these three questions; rather, such a division is consistent with actual practice. In fact, the question asked often is the right (ideal) question: what educational program does this child need? But because limited resources, categories, and insight make that question unanswerable, a very different question is answered: what is available that seems reasonably related to what the child needs? The actual process of decision entails comparative assessments of available programs, including the regular one. Once it is acknowledged that the regular program has a presumptive edge, see note 359 and accompanying text *infra*, it is proper to conceptualize the threshhold question as whether or not the child needs a special education program. In addition, some systems set certain conditions precedent that must be satisfied before a child can be specially classified. *See* CAL. EDUC. CODE § 6902.085 (West 1973).

[326] Larry P. v. Riles, 343 F. Supp. 1306 (N.D. Cal. 1972), is a case where fact issues were dispositive. The court proceeded on the basis of the following legal proposi-

From an examination of the nature of the interests at stake and the judgments that are required, it is not clear that traditional forms of procedural due process are appropriate for classification decision-making. The expense of formal proceedings may not in all cases be justified by any resulting benefits; and adversarial proceedings are not designed to elicit in a coherent fashion all the various kinds of information that must go into a managerial decision about how best to fulfill a child's educational needs. But there are benefits other than careful fact-finding associated with due process, and we shall briefly consider their relevance to special education classification.

First, when facts are explored in a formal due process proceeding, they are fully exposed for analysis and contradiction. It is arguable that due process would contribute to improving the content of special education because the reasons for each classification would be out in the open. If the reasons were invalid, they would be exposed, and the resulting public disapproval would force adjustments in a salutary direction. But any such changes would proceed slowly and modestly. Moreover, even though due process procedures might work effectively to underline program needs, there would be a cost, since drawing attention to what is needed but cannot be produced for lack of knowledge or resources might produce destructive tensions. Second, decisions made with due process procedures are ordinarily accompanied by a statement of reasons. Such statements articulating the grounds for the classification decisions might result in greater consistency, though much will depend upon the creation of a coherent set of criteria for each type of special classification and upon the ability of the opinion writer to express the reasons clearly. Third, it is claimed that due proc-

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tion: If (i) blacks (or members of other minority groups) were classified as "retarded" and placed in special classes at a rate disproportionate to their proportion of the relevant school age population, and (ii) there is no convincing evidence that blacks are generally less intelligent than whites, the classifications are unconstitutional. Once that proposition was accepted, both (i) and (ii) raised factual yes/no questions—were blacks disproportionately classified as retarded?; is there convincing evidence that blacks are generally less intelligent?—that were determinative of the outcome of the case.

[327] There appears to be a continuing lack of confidence that correct fact decisions are being made by educators and their professional advisors. People suspect that decision-makers may be hurried, incompetent, ignorant, careless, or acting in bad faith. "Bad faith" as used here does not mean prompted by viciousness or malice, but only that the decision-maker is affected by interests that may be inconsistent with those of the child. For example, a principal may feel some pressure to assign a student to a special education program if that student is a source of trouble to a particular teacher who, consequently, becomes a source of trouble to the principal.

ess procedures increase the competence and impartiality of decision-making. Whether this improvement would take place depends, in part, upon the present quality of special-education decisions, which vary from place to place. It is clear, however, that classification decisions at the present time are made by persons who have interests which often conflict with those of the child and which are likely to shape some decisions improperly.[328]

A fourth claimed benefit is that due process facilitates participation in determining one's own fate. But whether there would be such a benefit is indeterminable. The child cannot speak for himself, and his parents might be too uninterested, hostile or ignorant to speak in his best interest. Furthermore, increased participation will make a difference only if it genuinely has some bearing on the outcome of the decision, which it is likely to do the more important expert opinion becomes.

Finally, due process is said to increase public confidence in the integrity of decision-making. But the net effect in the classification context is ambiguous. If doubts about the validity of special-education decisions stem from public distrust of the particular persons making the decisions, lack of understanding about what is really going on, lack of participation in the process by persons championing the child's interests, or rumors about expedient placements, due process should tend to increase public satisfaction. If, however, the trouble lies rather in the lack of resources or of viable programs from which to choose, public confidence in the results of classification decisions will not be restored by introducing due process procedures. And there is a risk that over-emphasis on procedure will divert frontal attacks on the deficiencies of special education itself.

Before turning to a more detailed appraisal of a special-education due process model, one final general observation merits attention. Due process is an expensive decision-making mechanism—in terms of money, time, energy, and distraction. Plainly, the costs of providing due process must be carefully measured against the benefits of improving the quality of decisions and protecting children for possible serious harm.[329] And of course, if some due process procedures are justified, their costs should be minimized where possible, consistent with providing an acceptable level of decisional control.

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[328] See text accompanying note 26 *supra*.

[329] Under the pattern of decisions concerning the constitutional right to procedural due process, the Supreme Court sometimes has determined that a threatened interest is too insubstantial to merit constitutional protection at all. *See, e.g.*, Board of Regents v. Roth, 408 U.S. 564, 570-71 (1972); Cafeteria Workers v. McElroy, 367 U.S. 886 (1961). At other times, the Court has indicated that the protection required must be tailored to fit both the interest affected and the institutional burden that would result. Boddie v. Connecticut, 401 U.S. 371, 378 (1971); *see* Hannah v. Larche, 363 U.S. 420, 442 (1960). Both types of judgments are significantly influenced by the costs of holding due process proceedings.

B. A Due Process Proposal

A standard due process model includes the following features: Every person subjected to or threatened by serious adverse official action is entitled to participate at a hearing held after adequate and timely notice, and is entitled to be represented by counsel and to present evidence, make arguments, and cross-examine adverse witnesses. The proponent of official action has the burden of proof, the decision is reached by applying established criteria to the evidence presented and recorded at the hearing, and the decision is made by a qualified and impartial tribunal. A statement of reasons explaining the administrative decision is made public, and judicial review of the decision is available.

In order to consider the implications of applying due process procedures in the special-education context, it is necessary to make two assumptions: first, that the initial classification decision made by the school administration is regarded as subjecting the student to serious adverse consequences; and second, that the school administration's decision is subject to review (rejection, approval, or modification) by a "panel" consisting of one or more persons not affiliated with the public schools. This review would involve a hearing with the concomitant rights described above. Various aspects of this model will be discussed in turn.

1. Mandatory Versus Discretionary Proceedings

Certain procedural safeguards may be constitutionally required, as *P.A.R.C.* and *Mills* suggest.[330] But, putting possible constitutional rights to one side, it seems clear that any system that entitles every student specially classified by a school administration to extensive procedures for review raise at least two basic problems. First, the volume of cases required to be heard might be intolerable. Second, many decisions would be uncontested, and it is impossible to know that the "right" cases would actually receive full review.

It is obviously desirable to provide every classified student with a "day in court," and the burden of doing so can be reduced by a kind of informed self-interest. Parents would not subject themselves to the wear and tear of due process hearing if there were little chance of their challenge prevailing, and school administrators would, in time, cease to make classifications unlikely to withstand the scrutiny afforded by a due process hearing. But the precedents necessary for such self-regulation might be slow in developing and even slower in gaining acceptance, and there is still the possibility that the wrong cases may too often be the ones that are challenged by the children's parents. Adequate notice and counseling could alleviate but not eliminate this problem. For its part, the administration might tend to avoid review either by "settling" a case (and thus perhaps compromising the child's interests) or by not making the classification in the first place where the ultimate basis of its judgment is intuitive and thus difficult to document or prove.[331]

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[330] See notes 313-14 *supra.*

A screening system would make full review of the school administration's initial decision a matter of discretion rather than right, somewhat along the lines of the Supreme Court's certioriari jurisdiction. If volume were a problem, a screening process could select only important cases and clearly such a process could alleviate the "wrong case" problem. But screening, not surprisingly, raises many troublesome issues: Who initiates the exercise of discretion? What material is examined in order to exercise discretion? What criteria should control the exercise? And does screening result in unequal treatment? If parents must petition for discretionary review, there are again problems of relying upon parental initiative. This defect can be remedied, however, if initiative rests with someone in addition to the parents, and several possibilities exist: the review panel itself, a single member of the panel (perhaps on a rotating basis), a staff worker assigned to the panel, or possibly someone distinct from the panel, such as an employee in the Department of Education.

If review were discretionary, it would be essential that some uniform and streamlined record or report of the administrative action be available as a basis for exercising discretion. The record might include a statement of the case, the administrative conclusions, and the reasons for the particular decision. If parents were permitted to petition for review, the record submitted by the parent should also include argumentative or relevant factual material. Based on this record, the review panel would select certain classification decisions for full hearings. The criteria for selecting these cases should be very general, and the discretion to grant or deny a hearing very broad. The standard should be whether there is substantial likelihood of error, or whether questions of general importance are raised. "Importance" would attach to a recurring factual or legal issue on which precedent would be useful, or to certain categories of cases involving a high risk of error or stigma or a relatively low expectation of improvement.

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[331] One *P.A.R.C.* hearing became particularly long and acrimonious, and there have been no further referrals from the school district involved. This sort of avoidance seems an inevitable aspect of any requirement that the administration justify its action to an independent body. It will be minimized as a problem mainly by recognizing intuitive grounds of decision as valid to the extent it is feasible to do so.

Any system that selects certain cases for hearing and screens out others raises problems of equal treatment. But there are at least two means of avoiding unfairness even with discretionary review. First, the criteria used in selection for review, though broad, must be applied consistently. Second, there must always be some opportunity to be heard at the level of the original decision. This opportunity would be much more limited than that afforded by review panel hearings, but it should include at least clear notice and the opportunity for the parent to appear before the person or persons responsible for making the classification decision prior to the time that decision is made.

2. *Participation*

A person might be permitted to participate in the process of making a classification decision for three reasons: (1) The person might be able to present factual information that bears on the decision. (2) The person might represent a point of view that should influence the decision. (3) It might be beneficial to that person to be allowed to participate. In most due process contexts, the right of a person threatened with adverse governmental action to be present at the hearing is assumed. But the personal appearance of the student himself is probably not constitutionally required, and, in formulating classification procedures without regard to constitutional limitations, the decision whether to require, allow, or prevent participation by the student being classified should be made on the basis of real advantages and disadvantages. Relevant inquiries are whether the child will understand what happens at the proceeding, whether the child has any contribution to make to the decision, and whether it is beneficial or harmful to the child to be present. These questions must at least initially be answered by a psychologist or psychiatrist, and probably on a case-by-case basis.

The remainder of this discussion will assume that the child does not attend the hearing but that a parent[332] is present and, in effect, stands in for the child. It is wrong, of course, to assume that the parents' and the child's interests will never vary. Sometimes they clearly will conflict.[333] For example, a parent may want to "get rid of" a child he considers a nuisance or a burden, or might resist appropriate and beneficial placement in a particular special education program because he fears some resulting stigma. Often such conflicts cannot be detected,[334] and, to some extent, parent-child conflicts must simply be tolerated. Nevertheless, the governing procedures should include a provision for appointment of a guardian *ad litem* to represent the child's separate interests when there is evidence of a significant conflict of interest.

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[332] The word "parent" as used throughout this Article includes a guardian or other legally responsible parent-substitute.

[333] *See, e.g.*, Heryford v. Parker, 396 F.2d 393 (10th Cir. 1968) (discussion of waiver of counsel by parent who institutes proceeding to cause child's civil commitment). *See generally* Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545, 587-89 (1971).

We have assumed participation by parent-substitutes, but it is also possible that an organization—perhaps one such as PARC created to protect the interests of retarded children, or an organization which protects important rights generally, such as the American Civil Liberties Union—might want to intervene. Although the deciding panel should have discretion to control such intervention, permission should be granted liberally. Controlling statutes or regulations should state that intervention is to be permitted whenever rights of children not being classified are likely to be affected, or whenever there is reasonable ground to believe that the organization petitioning for intervention would enhance the quality of the record on which a decision is made. Unless the legal staff of the intervening organization is representing the parent directly in a lawyer-client relationship, an intervener's contribution is likely to be based not on facts peculiar to the child being classified, but on facts about similar children and programs in operation, and an analysis of the standards or criteria relevant to decision.

A different approach to "who participates" would involve the creation of an independent government agency to protect and further the interests of special-education children. Many variations for such an agency are possible, and the following is only a suggestive outline: The agency would be independent of the school administration, and would participate in the classification decision either on its own initiative or upon parental request. The agency would have its own staff, which would participate at every stage from initial consultation to judicial review. It would make its own policy decisions about whether and how to pursue cases to informal settlement, decision, or judicial review, but would not have the ultimate decision-making power. Either the decision-making panel and the independent agency would be completely distinct entities, or the agency and the panel would be separately functioning subdivisions of a more inclusive entity.

Creating an independent "children's agency" would plainly involve economic costs. It would also mean an additional bureaucratic structure which would acquire a life and a set of interests of its own, and could minimize the role of the parent and the parent's preferences concerning the child's education. But such an agency would also have its benefits. It would tend to increase efficiency; it would eliminate the capricious element created by reliance on parental initiative; it would increase consistency of policy and result; and it would be likely to have more clout than the parent in dealing with the school administration.

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[334] Compare the discussion of the Allegheny School conflict, in the text accompanying notes 110-11 *supra*, where parents strongly defended a seemingly inadequate school.

Participation must be considered not only in terms of "by whom," but also of "when." A typical sequence leading to special classification would be: (1) The student is identified as meriting special attention—he perhaps seems unresponsive, inattentive, or unmanageable. (2) The student is observed, and perhaps discussed, by teacher and psychologist, teacher and counselor, or teacher and principal. (3) The school psychologist conducts tests. (4) The student is evaluated on the basis of tests, observation, and academic performance. (5) The student is placed in some special program. (6) The student is reevaluated. Throughout the present discussion it is assumed that applicable procedures are made available at stages (4) and (5) and, perhaps, (6). But, participation by parent, child, concerned organization, or independent agency is possible at any of these stages. Furthermore, additional informal stages allowing participation might be added, such as the "pre-hearing hearings" that have evolved under the *P.A.R.C.* ruling in Pennsylvania.[335]

3. Notice

Perhaps the most basic requirement of procedural due process is that a person be given notice of proposed action with sufficient clarity and in sufficient time to enable him to prepare a case for presentation at the hearing. In the special education setting, the act triggering right to notice would be the school administration's initial decision to classify a child as "special." If the parents have a right to participate at the hearing before the panel, they should receive notice that fully describes the purpose of the hearing—including the range of possible placements that might result—and the basis of the school administration's decision—including what tests were given and their results, classroom or other observations, opinions of classroom teachers, and the inferences drawn from all such evidence. The parents should have this notice long enough in advance fully to prepare for the hearing. If participation includes the right to be represented by counsel, there should be sufficient time for the parents to engage a lawyer and for the lawyer to assemble appropriate evidence, including locating expert witnesses. The notice should clearly state the parents' rights—to be represented by counsel, to consult an independent educational psychologist, or the like. And if the hearing is discretionary, the parents should be informed of the method and criteria for the exercise of discretion.[336] Similar notice must be given to any other person or organization also having a right to participate.

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[335] See text accompanying note 147 *supra.*

In addition to formal notice when the school's decision to classify is made, the parents ideally should be notified of all preliminary actions taken by the school administration when considering the possibility of classifying a child for special education.[337] This notification should be in the nature of counseling. Even though the parents have no right to participate at the preliminary stage, they have a strong interest in knowing facts that vitally affect their child's education and future; and all administrative action should be described in sufficient detail to inform the parents of its basis and potential consequences.[338] The parents will sometimes be able to influence the classification process even at this stage by making oral or written communications with the school or by seeking independent legal, psychological, or other assistance. Furthermore, only if the parents know what is happening to their child and why, are they able to help the child with explanation, understanding, and compassion. Notification forces the school to articulate and explain what it is doing, to the clearer understanding of all parties concerned.

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[336] Statutory and court-mandated schemes for special-education classification commonly require notice to parents prior to the determinative hearing. The *P.A.R.C.* decision seems to require the most exhaustive notice requirements, ranging from a statement of reasons for and alternatives to the proposed action, to an exhaustive examination of procedures that will be followed and courses of action available to the parent. 343 F. Supp. at 303-04 (amended stipulation). *See also* Mills v. Board of Educ., 348 F. Supp. at 880-81.

[337] Not only should the notice to the parents be complete, but it should provide the necessary information in a manner that is sensitive and understanding. In some instances notices have been harsh, blunt and, consequently, extremely upsetting to parents. Oral statement of J. Hearson, Right To Education Officer, at July 10, 1973, Masters' hearing, under the *P.A.R.C.* decree.

[338] All notices should be written to be understandable by a layman. If there is still a reasonable basis for believing that the parent will not fully comprehend the notice, the school administration should take affirmative steps—a telephone call or a home visit to explain it. If the parent does not speak English fluently, it may be necessary even to use a translator. The California statute, for example, requires that the proposed classification decision be communicated clearly to the parents in the home language.

> Permission documents for individal psychological evaluation, and placements, shall be written in English and in the language of the parent or guardian. Conferences and notices to inform the parent or guardian of the nature of the placement process, the committee conclusion and the special education program shall be in the home language of the parent or guardian.

CAL. EDUC. CODE, § 6902.085 (West Supp. 1973).

Of course, school administrators might resist fully informing parents in all cases. Often the school would prefer not to be "bothered" by parental intervention. Administrative convenience should never be a ground for withholding information, but in some cases the school will have a reasonable basis for believing that informing the parents will detrimentally affect the child. And, notifying the parents will tend prematurely to crystallize a decision which otherwise would remain tentative and reversible. Therefore, while ordinarily parents should be informed sooner rather than later, school authorities should not be precluded from making a reasonable, good-faith, professional judgment to delay timing of first notification to parents that their child is being considered for special classification.

In addition to parental notice, it is important to consider what other persons or organizations should be informed of a pending hearing. Notices should certainly be sent at the parents' request to lawyers, child-advocate organizations, or others representing or assisting the parents. But because the involvement of a child-advocate organization may be indispensable for a meaningful protection of the child's rights, it may also be desirable to notify such an organization without awaiting parent initiative. This could be done in several ways. Interested child-advocate organizations could be required to "qualify" or register with some state agency, such as the Department of Education. The grounds of qualification could be kept very simple, the purpose of registration being primarily to determine which organizations wanted to participate. The list of qualified organizations would be distributed to all schools, and school administrators would notify the organizations of all special education hearings, supplying the name and addresses of parents. An organization could then choose to contact the parents; but, to protect the child's privacy, it would participate only with the parent's consent. Alternatively, to provide greater privacy protection, the school could include information concerning qualified organizations in the parent's notice, and leave it to the parent either to contact an organization or ask the school to do so. Or the notice could state that the organization listed would be informed within a stated period of time unless the parent requested notice to be withheld.

As a check on school administrations that might subvert or simply disregard notice requirements,[339] the decision-making panel should determine whether the parent received actual notice at all appropriate stages in the classification process. If the parent does not appear when entitled to do so, the panel should not proceed until satisfied that the parent had received and understood timely notice concerning the nature and purpose of the proceeding and his rights in relation thereto. Should information subsequently come to the attention of the panel indicating that the parent had not in fact been notified adequately, the panel should have discretionary power to conduct a partial or complete rehearing.[340] If the parent does appear but the panel determines that adequate notice was not given concerning some prior stage in that process, the panel should take that failure into account in assessing the initial classification decision and perhaps expand the scope of the hearing to reconsider the action taken at that stage more completely than would otherwise be appropriate.

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[339] See discussion of the California experience in text accompanying notes 298-99 *supra*.

4. *Professional Consultation and Services*

In criminal proceedings, one of the most fundamental aspects of due process is the right to counsel. The right is so important that criminal defendants who are financially unable to obtain legal assistance on their own are provided state-appointed counsel at the state's expense in all felony cases[341] and in misdemeanor cases where the possibility of incarceration exists.[342] The right of counsel, sometimes including the right to state-appointed counsel, has also been recognized as an essential ingredient of due process in many non-criminal areas,[343] and was included as part of the required procedural due process in both *P.A.R.C.* and *Mills.*[344]

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[340] Compare the judicially mandated procedure in *P.A.R.C.*, which requires that all notices be sent by certified mail if they are not given in a conference. If notice is sent by certified mail, the parent can return an enclosed card within 10 days to request hearing. If the card is not received, the board may assume that the right to a hearing has been waived. 343 F. Supp. at 304.

[341] Gideon v. Wainwright, 372 U.S. 335 (1963).

[342] Argersinger v. Hamlin, 407 U.S. 25 (1972).

[343] *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254, 270 (1970); *See generally* Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545, 603-15 (1971); O'Neil, *Of Justice Delayed and Justice Denied: The Welfare Prior Hearings Cases*, 1970 SUP. CT. REV. 161, 178, 195-200.

[344] *P.A.R.C.* provides the right to representation "at the hearings by any person of [the parents'] choosing, including legal counsel." 343 F. Supp. at 305 (amended stipulation 1972). *Mills* requires that the parent be informed of "the right to be represented at the hearing by legal counsel. . . ." and that indigent children be assisted in obtaining (though apparently not guaranteed as of right) legal counsel. 348 F. Supp. at 881.

> The child shall have the right to a representative of his own choosing, including legal counsel. If a child is unable, through financial inability, to retain counsel, defendants shall advise child's parents or guardians of available voluntary legal assistance including the Neighborhood Legal Services Organization, the Legal Aid Society, the Young Lawyers Section of the D.C. Bar Association, or from some other organization.

Id. at 881, ¶ 13(e)(6). A Massachusetts statute, effective in 1974, specifies that if there is a disagreement between parents and school over the placement recommended in the initial evaluation, the parents are entitled to a hearing before the Department of Education. MASS. GEN. LAWS ch. 71B, § 3, ¶ 12 (Supp. 1973). The procedures

If special-education classification decisions are stigmatizing, detrimental, highly susceptible to error, and open to influence by improper motives such as racism or the desire to "dump" troublesome students, then there is a strong case to be made in support of the *P.A.R.C.* and *Mills* decisions granting the right to assistance of counsel. If these assumptions are firmly believed, the case easily justifies the further right to state-furnished counsel for indigent children. But if these assumptions are rejected or only tentatively believed, the right to counsel argument is weaker—or at least more complicated.

The primary justification for participation by counsel is the lawyer's ability to present evidence in an orderly fashion. The value of that contribution looms large when factual issues are important and the consequences of their resolution are potentially extremely damaging. A lawyer may also contribute to the classification procedure by articulating the child's position in favorable terms relative to the governing standards or criteria. More generally, a lawyer may help to give the proceedings order and objectivity even though he is representing one party; his status and ease in formalized proceedings might have a valuable balancing influence where most of the significant participants may be aligned on one side.[345]

It can certainly be argued that lawyers would be detrimental—that they would tend to make proceedings too formal and costly, that they would be intimidating to other persons, or that they would interfere with the proper presentations of psychological evidence by forcing the psychologist's evaluation into a question-and-answer format. None of these consequences is inevitable, nor necessarily very likely. They may, to a considerable extent, be consequences of the adversary nature of the due process hearing itself. The asserted lawyer-caused disadvantages may just be indications that lawyers would indeed make the hearings work according to their design and purpose. And both the costs and benefits of lawyerly participation can be significantly affected by the quality of the presiding panel and the degree of control it is willing to assert.

If, after costs and benefits were weighed, lawyer participation were rejected, the parent would still be free to consult a lawyer in ad-

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provided in this hearing are to conform with those of the Massachusetts Administrative Procedure Act. MASS. GEN. LAWS ch. 30A (1966). The Massachusetts Administrative Procedure Act does not explicitly guarantee a right to counsel in the hearings, but it is implicit that all of the procedural protections provided are done so in the framework of representation by legal counsel. *See* MASS. GEN. LAWS ch. 30A, § 11 (1966). The decision should be "mailed upon request to each party and to his attorney of record." *Id.*

[345] For a more complete statement of the lawyer's potential contribution in a related context, see Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545, 603-15 (1971).

vance of the proceeding. Perhaps he should also be able to retain the lawyer during the proceeding for consultation though not for representation. If, on the other hand, lawyer participation is permitted, the parent should be able to retain instead a non-lawyer to represent his interest,[346] as lawyers might be scarce or expensive. The tasks of marshalling facts and articulating a position could be performed by law students or persons with paralegal training.

Once the right to representation by retained counsel is given, the question arises whether counsel should be provided by the state for those who lack the resources to provide their own. The question is particularly important because classification for special education tends to correlate with poverty: denying state-appointed counsel might preclude representation by counsel where it is needed most. Nevertheless, the question whether the state should provide counsel is very different from the question whether a participant should have the right to be represented by retained counsel. To decide that a parent may be represented by a lawyer he hires, one need decide only that the presence of a lawyer will not be detrimental to the proceeding. But state-appointed lawyers add significantly to the cost of hearings, and to require appointment one must make a judgment that the extra cost is necessary to offset a substantial disadvantage of unrepresented parents that could result in great injury to a child.

In criminal and juvenile proceedings, due process sometimes requires the right to additional professional assistance besides that of counsel.[347] Clearly, classification proceedings require the professional services of educational psychologists, for psychological evaluation of tests and other data is by far the most critical input into the classification decision. Although examination by school-employed psychologists should always be a condition precedent to special classification, it is crucial that the parent have the right to present the evaluations of independent psychologists. Psychological analysis and evaluation involves professional judgment that is, to some extent, not susceptible to objective proof or challenge. But no one contends that all psychologists would decide the same case alike. And since some of the most serious challenges to special-education classification are the absence of trustworthy criteria, the inconsistency of tests relied upon, and the failure to use a sufficiently broad range of data in making classification decisions, expert testimony can obviously be essential to support a challenge to the school's initial determination. The importance of the right to present such evidence has fortunately been recognized. Under the *P.A.R.C.* decision, a parent can introduce at his own expense "other expert testimony" at the hearing, including, apparently, reports or oral testimony by educational psychologists not employed by the school. A Massachusetts statute that will become effective in September 1974, goes further and specifies that a child is entitled to an independent evaluation.[348] The *Mills* decision states that notice sent to parents or guardians must include the address of a local diagnostic center where the child can be independently evaluated.[349]

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[346] *See* provision of *P.A.R.C.* decree, note 46 *supra*.

[347] *See* Goldstein & Fein, *The Indigent Accused, the Psychiatrist, and the Insanity Defense*, 110 U. Pa. L. Rev. 1061 (1962); Note, *Right to Aid in Addition to Counsel for Indigent Criminal Defendants*, 47 Minn. L. Rev. 1054 (1963).

The more difficult question is whether this professional assistance must be provided to the indigent parent at state expense. The benefit to the parent seems clearer than that resulting from assistance of counsel, and the potential disadvantage to the effectiveness of the hearing insignificant. In our opinion, there will be serious disagreement over the child's need for special education primarily only in cases involving mildly handicapped children. It would be feasible, therefore, to provide that in those cases a parent has the right to psychological services, provided by the state if necessary, unless the decision-making panel makes an affirmative finding that such services could not reasonably be expected to have any substantial effect on the classification decision. In cases involving a determination of the need for special education for seriously handicapped children, a desirable and feasible system would be to provide psychological services to indigent parents only if the panel makes an affirmative finding that such services can reasonably be expected to have a substantial effect on the evaluation decision. We would choose to put all placement decisions (in contrast to need decisions) in the second category and thus place the presumption against state-appointed psychological services in the absence of a panel determination. But this position is closely related to the belief that the panel should have much flexibility in making placement decisions generally.

5. *Presentation of Evidence and Cross-Examination*

Both *Mills*[350] and *P.A.R.C.*[351] provide for extensive rights to present evidence and cross-examine witnesses,[352] with no suggestion that these rights should be conditional or qualified in any way. But, as discussed previously, there is a question whether the sort of factual dispute that gives rise to evidentiary rights and rules is characteristic of what must be decided in a classification proceeding.

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[348] Upon completion of said evaluation the child may obtain an independent evaluation from child evaluation clinics or facilities approved by the department jointly with the departments of mental health and public health or, at private expense, from any specialists.

MASS. GEN. LAWS ch. 71B, § 3, ¶ 10 (Supp. 1973) (effective Sept. 1974).

[349] Such notice shall . . . inform the parent or guardian that the child is eligible to receive, at no charge, the services of a federally or locally funded diagnostic center for an independent medical, psychological and educational evaluation and shall specify the name, address and telephone number of an appropriate local diagnostic center . . . .

348 F. Supp. at 880-81 (¶ 13(e)(2)(e)).

[350] 348 F. Supp. at 880 (¶¶ 13(e)(2)(f), (10), (12), (13)).

[351] 343 F. Supp. at 304-05 (¶¶ 3(f), (r), (s)).

The right to present evidence and, especially, the right to cross-examine witnesses,[353] are extremely important and useful safeguards that contribute to the correct resolution of factual disputes. They would, therefore, be appropriately incorporated in classification procedures if factual disputes were frequently raised. But disputing a classification decision which is based on an assessment of the child's condition or ability usually raises complicated problems of psychological interpretation and educational policy rather than simple factual issues. It is possible, though not likely, that the parents will have some clear factual issue to prove, such as that the child's test score was improperly recorded, or that the conditions under which a test was given were improper, or that the person who administered a test showed a racial bias toward the student. But more likely, the parents will argue that information such as observed social behavior was erroneous. This might entail a factual dispute about what the child actually did, but it is more likely to entail a challenge to the inferences drawn from the observed phenomenon. What inference can be properly drawn from such observations is indeed still a question of fact. But it is a fact of a different kind. Its "truth" depends largely upon expert interpretation. Although the basis of the expert's opinion should be open to challenge, psychological interpretation is not readily amenable to proper presentation via traditional modes of questioning and cross-examination. If the parents accept as correct the facts and inferences drawn but argue that the classification decision was wrong because special education programs do not "work" or because a student will be "better off" in the regular classroom, he is really challenging the underlying policy judgments on which special education is premised. Values, rather than facts, are disputed, and a resolution will not significantly be assisted by enabling the parent to prove or disprove facts.[354]

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[352] *See also* MASS. GEN. LAWS ch. 71B, § 3, ¶ 12 (Supp. 1973) (effective Sept. 1974). Under the pending Massachusetts scheme, when a parent refuses the educational program proposed on the basis of the initial evaluation, the parent may request a hearing to inquire into "the evaluation of the child and the appropriate education program," and this hearing is to be held in accordance with the provisions of the Massachusetts Administrative Procedure Act which explicitly provides for the presentation of evidence and cross-examination. *See* MASS. GEN. LAWS, ch. 30A, § 11, ¶ 3 (1966).

[353] Cross examination has been called "the greatest legal engine ever invented for discovery of the truth." 5 J. WIGMORE, EVIDENCE § 1367, at 29 (3d ed. 1940).

[354] Of course, the fact/value judgment dichotomy can be overstated; facts do

There are costs associated with permitting extensive presentation of evidence and cross-examination or witnesses, which must also be reckoned. The main disadvantage is the consumption of time: presenting evidence through oral questions and answers is a slow process. Cross-examination can be an unpleasant experience for witnesses, which creates or heightens tensions and possibly deters some persons from testifying at all.[355] These disadvantages are significant and should not be incurred unless there is real countervailing benefit.

If, overall, it is determined that fact issues are not liable to be significant at classification hearings and that therefore the costs of permitting full rights to present evidence and cross-examine witnesses are too high, then these rights might be dispensed with. Or, the extent of permissible presentation of evidence and cross-examination could be left to the panel's or presiding officer's discretion on a case-by-case basis. As an irreducible minimum of parental participation, parents should be able to make some written or oral response to the school administration's evidence and conclusions,[356] with respect to both the threshold decision to consider special education, and the content of the placement decision itself.

6. *Burden of Proof*

To establish criminal liability or make a finding of delinquency that would lead to a juvenile's confinement, the government must prove

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underlie value judgments. But a distinction has been made between "adjudicatory facts," to which cross-examination is uniquely relevant, and "legislative facts," or policy determinations, to which it is not. *See* 1 K. DAVIS, ADMINISTRATIVE LAW §§ 7.01, 7.04, 7.06 (1959) [hereinafter cited as DAVIS].

[355] The absence of compulsory process to require the attendance of witnesses is sometimes given as a reason for withholding cross-examination. *See* Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545, 598-603 (1971). But absence of compulsory process only dilutes the effectiveness of cross-examination rights where the witness will not voluntarily appear. *Id.* at 597. Moreover, compulsory process can be included in the procedural scheme adopted either by giving the power to the panel directly or by enabling the panel to petition the court for an order to testify. Both the *P.A.R.C.* and *Mills* decisions include provisions for compulsory process, although the *Mills* decree is limited (perhaps inadvertently) to "any official, employee or agent of the public school system or any public employee who may have evidence upon which the proposed action may be based . . . ." 348 F. Supp. at 880 (¶ 13(e)(12)). *P.A.R.C.* more broadly included "any witness testifying for the school board or intermediate unit . . . ." 343 F. Supp. at 305. Since the courts have general power to compel testimony, either decree could easily be enlarged.

[356] *See* Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961).

> In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf.

its case "beyond a reasonable doubt."[357] In most administrative proceedings where an adverse finding would subject a person to serious deprivation of liberty other than incarceration, the standard of proof is lower, but the burden of proof remains on the government to establish the facts that would justify deprivation.[358] This burden-of-proof allocation is consistent with the basic concept of fundamental fairness that dictates that a person threatened by governmental action and serious loss of freedom be equipped with procedural safeguards.[359]

Assigning the burden of proof to the school administration is justified by several considerations.[360] Most of the significant facts—what the child has done and failed to do in school, the child's test scores, the circumstance of testing, the choice of tests, the effect of the child's behavior or learning problems on others—are within the possession or control of the school administration. In addition, the burden of proof is ordinarily assigned to the person seeking to change the status quo (*i.e.*, the child needs special education) rather than to maintain it (*i.e.*, no change in his education program is necessary). Further, the argument for allocating the burden of proof to the school administration—making it justify changing the child's life—is considerably reinforced by the general acknowledgement that a special education assignment tends to be a "one-way" street. As long as relative irreversibility is a fact, there should be real threshold obstructions in the way of initial special-education assignments.

The burden-of-proof allocation suggested here coincides with obtaining desirable outcomes in certain kinds of cases, based on what is presently known about special education. Criteria for deciding that special education is needed for mildly handicapped children are in dispute: consequently, it would be relatively difficult for the administration to succeed in meeting a burden of proof in such cases. Where there is considerable doubt about whether an assignment of certain

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Id. at 159. Whether or not the right to present or cross-examine witnesses is recognized, the parents might have the right to "discover" and examine all documentary evidence as required by both the *P.A.R.C.* and *Mills* cases. *See* 348 F. Supp. at 880 (¶ 13(e)(10)); 343 F. Supp. at 305 (¶ 2(r)).

[357] *In re* Winship, 397 U.S. 358 (1970).

[358] *See, e.g.*, Administrative Procedure Act, § 7(c), 5 U.S.C. § 556(d) (1966). ***But see*** Roth v. Board of Regents, 310 F. Supp. 972, 980 (W.D. Wisc. 1970), *rev'd on other grounds*, 408 U.S. 564 (1972).

[359] This view probably best explains the presumption in favor of regular classroom placement established in both *P.A.R.C.* and *Mills*. *See* 348 F. Supp. at 881 (¶ 13(e)(8)); 343 F. Supp. at 305 (¶ 3(o)). *See also* CAL. EDUC. CODE § 6902.06 (West Supp. 1973), which specifies that no assignments should be made to special programs if children "can be served in regular classes"; MASS. GEN. LAWS ch. 71B, § 3, ¶ 1 (Supp. 1973) (effective Sept. 1974).

[360] *See generally* 9 WIGMORE, EVIDENCE §§ 2483-89, 2537 (3d ed. 1940); 1 L. FULLER & R. BRAUCHER, BASIC CONTRACT LAW 636 (2d ed. 1964).

children to special education programs will be truly beneficial, this means of "slowing down" the schools is desirable. On the other hand, the justification for assigning seriously handicapped children to special education programs is undisputed. In these cases the burden of proof will be easy to satisfy and the proper result obtained.

7. *Criteria for Decision*

The ground upon which a decision must be based marks the intersection of procedure and substance. Unless a decision is predicated on identifiable and reasonable criteria, the requirement of procedural protection becomes an elevation of meaningless formality. On the other hand, the existence of wise and reasonable criteria will be of no avail unless individuals affected by those criteria have procedural avenues through which they can insist that the applicable criteria be fairly applied in their own cases.

Where comprehensible criteria for official action exist, due process procedures help to ensure consistency in the treatment of like cases by minimizing bias and caprice, and they ensure the existence of a legitimate basis for governmental actions that will seriously affect private interests. Due process proceedings force officials to articulate and prove the basis for proposed action and enable the individual threatened to show the absence of an acceptable basis in law or fact, or to demonstrate that the actual basis for action is other than the one claimed. By driving the process out into the open, unwise and unacceptable decisions can be identified and corrected. Consistent exposure itself tends to eliminate palpably untenable grounds.

In the classification context, however, it is very difficult to articulate comprehensive and satisfactory criteria for all special education decisions; and a requirement that classification decisions be based only upon articulated criteria would tend to eliminate valuable flexibility. The complexity of classification problems, the number of possible variables, and the importance of intuitive professional judgment all point to the need for flexibility. The difficult question is how to combine this flexibility with criteria sufficient to prevent capricious, inconsistent, and unexplained decisions.

Flexibility will be determined in part by the nature of the criteria used. At least four different types of criteria can be identified: (1) facts concerning the classified student; (2) facts concerning the school system's capacity to meet the student's educational needs; (3) facts concerning possible disadvantages resulting from special classification; and (4) peripheral facts bearing only indirectly on the classification decision.

All four types of criteria should be used in determining the need for special classification, and a second set of criteria might be necessary then to determine the proper program in which to place a child. Many of these criteria clearly require an exercise of judgment; since in each case application of the relevant criteria might indicate different results, they do leave room for flexibility and careful balancing of costs and benefits both to the particular child and to the school system. Given the need for flexibility, the necessity of relying on informed expert judgment, and our limited knowledge about many aspects of special education, we suggest that placement decisions call for the establishment of criteria through a process of common-law evolution. While great scope should be left to professional discretion, limits can be imposed by permitting parties to submit specific education plans supported by reasons and requiring all decisions—even those resting on intuitive judgments—to be explained.

8. *The Decision-Making Body*

So far we have assumed the existence of a neutral review panel that would perform a court-like function. The school administration and someone acting for the child would each make some kind of presentation, and the panel would decide the case. Decision by an impartial, objective third party is certainly a fundamental aspect of traditional due process. Yet decision by a panel on a hearing record is clearly not the only way to make classification decisions—and is not inevitably the best way. We do not assert that each of the approaches to decision-making outlined below would comport with the demands of traditional due process of law. We do reemphasize, though, that the requirements of due process, constitutional and otherwise, depend upon what is fair and feasible in each particular context Thus, if some form of procedure does not deny much that is of real benefit to the child compared to alternative procedures, and yet is much less costly, there is reason to conclude that the procedure constitutes due process. The following are alternatives, in whole or in part, to the review panel decision-making model.

a. *Administrative Finality*

One alternative would be for the administrative decision of the school to be final. This is the system generally prevailing now. Its obvious advantages are simplicity and efficiency, and a tendency to relate responsibility to decision-making. In a highly homogeneous community where there was a high level of trust and confidence in the judgment of both school administrators and psychologists, this would be an ideal system. But in large cities there is nothing approaching such a community, and special education programs are severely criticized. To note one painful illustration, there will certainly be no confidence or trust in the decisions of mainly white educators as long as they continue to classify disproportionate numbers of black children in special categories.

b. Professional Control

The professional decision-maker has special knowledge, training, insight, and experience that, arguably, enable him to make the best possible classification decisions. Ideally, the expert or professional should know which records to examine, which tests to give, what consultations to make, what persons to interview, and what questions to ask in order to establish a basis for a correct decision. Furthermore, the professional, disinterested viewpoint should remove any question about impartiality. Were classification decisions made by such ideal professionals, either no review, or review only by other comparable professionals, would be required.

The expert judgment of the educational psychologist should always play an important part in formulating classification decisions. But in reality the psychologist's professional judgment may too often be distorted or deflected by the needs or the value system of the regular school hierarchy. Therefore a second alternative procedure based on professional judgment should somehow insulate the deciding professionals from the influence of these undermining forces. Such insulation might be accomplished in a number of ways, but the purpose would be always to ensure decision-making by educational psychologists immune from control and influence by the school administration and not reversible by the school administration. Taking the psychologist completely out of the regular school system for all purposes—hiring, firing, evaluation, promotion, and compensation—might accomplish this end. But there would be at least two very significant disadvantages: first, it would require a truly Herculean reorganization of the present system;[361] and second, removing educational psychologists from the regular system would probably reduce their ability to harmonize efforts with the classroom teacher.

Rather than leaving initial classification to the psychologists, one could guarantee "professional finality" by subjecting initial decisions by school administrators to professional review. The feasibility of this approach would depend on the availability in adequate numbers of qualified professionals sufficiently disassociated from the school administration and the schools' own educational psychologists to be truly independent and impartial. It also raises questions about the process by which the reviewing professionals would apprise themselves of the information necessary to exercise professional judgment. At one end of the spectrum, a reviewing panel composed of educational psychologists could operate in a traditional adjudicatory fashion and base its decision on a formal hearing record. At the other extreme, the reviewing board (or person) could simply take over the case and make a de novo determination.

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[361] The necessary separation might be approximated by having the psychologist work for a different level of government (such as the county rather than the school district) or a different department (such as Welfare rather than Education), but even this would involve a substantial change in existing arrangements.

c. *School/Parent Negotiation*[362]

A completely different means of taking the classification decision out of the unilateral control of the school administration would be to require that the administration negotiate with parents. This approach downgrades the professional quality of the decision and upgrades the significance of parental consent. Apart from the dilution of professional input, this alternative raises certain problems. First, there is the problem of inducing parents to utilize their right to bargain. Second, there is the problem of defining the bargaining obligation—how much joint effort is required, what compromises are acceptable, and so on. Third, what happens when the negotiating process reaches an impasse? Every system of bargaining must contain an end play—a strike, unilateral action by one of the parties, arbitration, or judicial intervention. Were special education decisions negotiated, a bargaining failure could be followed by any of the alternative procedures available—due process hearing, administrative finality, professional review, judicial intervention, or some form of third-party involvement. A breakdown of bargaining could also mean mandatory preservation of the status quo, giving the parents a veto over any classification decision.

d. *Parental Consent*

It is a short step from a procedure requiring bargaining with the parents to a procedure requiring parental consent for particular classification steps. Parental denial of the necessary consent would be final, and the child would stay in the regular classroom as before.[363] This veto power may be acceptable if special education is regarded with great skepticism or if it is considered proper for a parent to have an unchecked power to make even damaging decisions concerning his child—a power that parents clearly have in some contexts.[364] In many cases, however, parents will not be satisfied with the status quo resulting from exercising a veto over the school's proposed placement, and in such cases the theoretical veto power will be, practically speaking, reduced to leverage—like bargaining power—to extract alternative proposals from the school.

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[362] For a thoughtful and exhaustive exploration of considerations relevant to coordination of behavior see Heymann, *The Problem of Coordination: Bargaining and Rules*, 86 HARV. L. REV. 797 (1973).

[363] But see text accompanying notes 397-98 *infra*, for a discussion of "emergency" provisions under which a child would be removed, without parental consent, not to meet the removed child's educational needs but to eliminate conditions detrimental to the well-being of that child, other children, or the educational process.

Both the California statutory scheme (as applied to educable mentally retarded and educationally handicapped classifications) and the recently adopted Massachusetts statute give great significance to parental consent. Under the California procedure, a parent must consent, separately, to psychological evaluation for the purpose of making a classification decision and to the child's placement in a particular special education program.[365] The fact that these consent requirements are abused and disregarded points up the need for either enforcement provisions or incentives to induce compliance. Enforcement is considered, subsequently, under the section on judicial review. Incentives might be provided in a variety of ways. One approach would be to make the absence of valid parental consent grounds for invalidating a classification decision. This device would work somewhat like the exclusionary rule for evidence obtained through unconstitutional confessions and searches. But its effectiveness as a deterrent may be doubted,[366] as even bad classifications would probably not be challenged consistently; and at any rate it is a patently undesirable remedy whenever the decision invalidated is in fact the best one for the child. Instead, the lack of consent might just require reconsideration rather than permanent abrogation of the previous decision. Another alternative would be to discharge or otherwise sanction any employee responsible for the failure to obtain necessary consents. Discharge might be impossible if there were no labor pool available for replacement. The preferable solution would be to induce compliance with consent requirements by convincing the educators involved that parental consent really does matter.

The Massachusetts statute creates a procedure under which parents may reject each of three successive placement recommendations.[367] Following the last rejection, the parental veto may lead to an action in court.[368] The criteria to guide the court in deciding the student's fate are, unfortunately, not clear, as the statute just authorizes the court to have the child placed "in an appropriate education program." It seems likely, though, that a court would base its decision on a combination of three factors: the parents' indicated preference (inasmuch as parental consent is emphasized by the statute); the nature of and reasons for the successive placement proposals; and the reasons, if any, given by the parents for rejecting the proposals. Unless the Massachusetts statute suffers the same subversion as the parental consent provisions in California, this triple-consent scheme will give Massachusetts parents a significant power to bend placements proposed by education officials to parental liking. Rather than fight parents down the line to judicial determination, officials are likely to listen to parents, attempt to persuade them, and settle for compromise placements. This complex system seems justifiable only if it is assumed that parents have either a real contribution to make to the placement process or a moral right to control their children's education, and that the expertise of school administrators and their advisors should be substantially discounted.

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[364] *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205 (1972) (Amish children excused from high school compulsory attendance laws by reason of family religion).

[365] CAL. EDUC. CODE, § 6902.085 (West Supp. 1973).

[366] The exclusionary rule's deterrent effect on police behavior has been questioned. *See* Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665, 674-709 (1970); J. SKOLNICK, JUSTICE WITHOUT TRIAL (1968).

e. *Judicial Determination*

Resort to judicial review is a possible last step of any procedure, as it is in the Massachusetts scheme. But judicial determination could be given a featured role early in the classification process. Early or late, however, the question is how completely will a court examine an administrative decision to classify a child, for the scope of judicial review will significantly influence the frequency of resort to the courts. Courts generally lack any expertise in the field of special education, and judicial proceedings are apt to be slower, more cumbersome, and less flexible than alternative administrative proceedings. On the other hand, the finality of judicial action may be valuable; and if the case is likely to end up in court anyhow, there is much to be said for getting it there quickly.

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[367] MASS. GEN. LAWS ch. 71B, § 3, ¶¶ 12-13 (Supp. 1973) (effective Sept. 1974). If, after the second rejection, the parent desires a regular rather than special program, he gets only two rejections rather than three. *Id.* at ¶ 13.

[368] When the parent opts for a regular education program, the court action is initiated by the local "school committee," *i.e.*, the Board of Education, if, but only if, the desired assignment would be harmful to the child or disruptive for others; otherwise the assignment desired by the parent must be given. When the parent opts for a special program, the initiation of court action appears to be left to the parent, but the statute is not clear. Prior to court action, the statute requires reference to a "state advisory commission on special education" for a "determination" by the commission; then, if "the parent rejects this determination, they may proceed to superior court. . . ." If "they" refers to the parents, it appears that a parental failure to initiate judicial proceedings leaves the matter in limbo and leaves the child where he started in the regular program. On the other hand, the statute might be construed—contrary to a literal reading—to permit a parental rejection *only* in conjunction with the initiation of court proceedings. Or, "they" might refer ungramatically to the commission.

f. Third-Party Intervention

In addition to any of the alternative procedures thus far suggested, some system of third-party intervention could be adopted. Perhaps the classic example is the mediator's intervention in bargaining situations. A mediator in classification procedures would not take over the responsibility of decision-making, but would intervene into a previously bilateral process (such as school-parent negotiation) and attempt to help the parties reach an agreement.[369] Somewhat similarly, an ombudsman[370] might be used to help the parties better utilize the procedural system or arrive at a solution that can be validated by the decision-making system. An ombudsman might also perform the much less restrictive role of proposing changes in the system as a whole on the basis of accumulated experience with individual cases. This latter role is important when there is no clear solution to the problems of appropriate procedure or appropriate criteria. It is comparable to the role of the two masters in the *P.A.R.C.* case:[371] although they were appointed for the express purpose of aiding the court in enforcing its decree, the masters were expected to recommend solutions to unanticipated problems as they arose. Finally, an independent agency representing the child's interest[372] could be considered an intervening third party

9. The Composition of the Panel

A central feature of the due process model is the competent, impartial, decision-making tribunal—the review panel. The ideal panel would be composed of an educational psychologist, a lawyer, and a lay member not a psychologist, lawyer, or educator. The psychologist would be specially qualified to examine critically the technical basis of the administrative classification proposal and any contrary presentation, and to explain this technical information and his own analysis of it to the other panel members. Although there are precedents for medical board members making independent examinations of the physical or mental condition of a party,[373] all of the panel members, including the psychologist, should ordinarily confine themselves to information presented at the panel hearing. This would help ensure that the "scientific" nature of the classification decision would not be exaggerated, that the psychologist would not be regarded as a super-member of the panel, and that the psychologist would not displace the school administration's and parents' own experts. The psychologist would, however, fill a vital role in evaluating the qualifications and methodology of the school's psychologists. This role would be especially important if the parent did not have the assistance of his own expert; and presumably the psychologist would urge the panel to demand retesting or additional expert testimony when appropriate.

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[369] *See, generally*, Fuller, *Mediation—Its Forms and Functions*, 44 S. CAL. L. REV. 305 (1971); Stevens, *Mediation and the Role of the Neutral*, in FRONTIERS OF COLLECTIVE BARGAINING (J. Dunlap and N. Chamberlain eds. 1967).

[370] For a sample of the extensive literature about the ombudsman see S. ANDERSON, OMBUDSMAN PAPERS: AMERICAN EXPERIENCE AND PROPOSALS (1969); S. ANDERSON & J. MOORE, ESTABLISHING OMBUDSMAN OFFICES: RECENT EXPERIENCE IN THE UNITED STATES (1972); W. GELLHORN, OMBUDSMEN AND OTHERS (1967).

[371] *See* 334 F. Supp. at 1267.

[372] See text accompanying notes 121-27 *supra*.

The lawyer's role would be to provide expertise in the systematic and efficient development of relevant evidence. This lawyerly skill would be valuable not only in sifting and evaluating evidence, but also in conducting and controlling the hearing. When the parent was not represented by counsel, the panel lawyer would also help compensate for the lack of this assistance.

The third panel member would cast a potentially decisive vote and would perform a jury-like role, providing a lay perspective. It is arguable that the panel's third person should be an educator on the ground that education is the third field of special knowledge that would be particularly useful.[374] But this choice would seem to load the dice in favor of the school system's evaluation and would therefore detract from the panel's impartial character.

There is a danger that the educational psychologist, because of his expertise, would dominate the other two panel members. But the lawyer's familiarity with formalized proceedings and with ordering, weighing, and comparing all the evidence—should counterbalance the influence of the psychologist. There is also a danger that the lawyer

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[373] *See, e.g.*, McCarthy v. Industrial Comm'n, 194 Wis. 198, 215 N.W. 824 (1927).

[374] The third member of the appellate hearing body proposed under the *P.A.R.C.* decree is an educator. *See* MASTERS' REPORT, Nov. 6, 1972. In California, local admissions committees are composed of an administrator in charge of special education programs in the district or county or other administrator designated by the school district or county superintendent of schools, a school psychologist, a special education teacher, and a school nurse. CAL. EDUC. CODE § 6902.05 (West Supp. 1973). Hearing panels that deal with parental objections to withdrawals of children from certain programs are composed of either a school psychologist, a special education teacher, and a special education administrator, *id.* § 6902.09, ¶ 2, or a school psychologist, the medical director of the nearest regional center for the mentally retarded (or his appointee), and a special education teacher, *id.* ¶ 3.

(or the third member) would become overly impressed with his own newly gained scientific knowledge; but the presence of the genuine expert should chill any such tendency.

It is critically important that the panel be both competent and impartial. Both qualities are necessary if the panel is to have the self-confidence to evaluate objectively school administration classification decisions. The panel can have the necessary impartiality only if all panel members are immune from any influence from either side. Panel members should not be appointed, compensated, approved, or subject to any control by the school administration. Further, the educational psychologist should not have a professional career so parallel to that of the school psychologist that he will have a natural tendency to "go along with" the school psychologist's position.

It seems doubtful that the hearing officers under either the *P.A.R.C.* or *Mills* decree have been sufficiently impartial and competent. In Pennsylvania, all hearing officers are school psychologists or "special educators"[375] (a somewhat loose concept that can include persons with various psychological, counseling, and curricular preparation), and although they are given some instruction and training,[376] there is reason to doubt their competence to hold hearings. Furthermore, the hearing officers often hear cases in neighboring towns, and they may have a strong community of interest with the persons responsible for the classification decisions under review. Similar weaknesses inhere in the hearing system spawned by the *Mills* case.[377] In addition, while the D.C. hearing officers are forbidden to be school-district employees, they are hired by the city of Washington, D.C., which was a party in the *Mills* case and is itself the employer of all school district personnel.[378]

It is not easy to decide who should select a hearing panel. One possibility is to have ad hoc panels selected by the means conventionally used to select arbitrators: each of two parties selects one member, and the two nominees select a third. The obvious flaw is that this procedure does not adapt easily to the suggested ideal of specialized panel membership. A similar, but slightly preferable system employed under *P.A.R.C.*, entails the compilation of a list of names, with each party given the power to veto unsatisfactory persons on the list. But this alternative works best when only a single hearing officer is required and, again, is inappropriate for a specialized, multi-member panel, unless it is made considerably more complex.

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[375] See text accompanying note 139 *supra.*

[376] See text accompanying note 136 *supra.*

[377] See text accompanying notes 242-43 *supra.*

[378] See text accompanying note 242 *supra.*

Preferably, there should be a single panel selected for a given area for a given period of time. The panel should be named at the state level, with a total membership (in multiples of three) sufficient to meet the state's entire case burden. If necessary, the panel could be subdivided on a regional basis. Panel membership could require either full-time employment or part-time service, depending on the case load and available state resources. Case load—and thus cost—could be kept down by giving the panel discretion to screen all cases and decide which to hear and by giving the panel clear power to conduct proceedings as expeditiously as possible. Oral presentations could be eliminated when written statements or affidavits would be satisfactory means of presenting the evidence, and cross-examination could be denied when there was no reasonable expectation that it would produce gain commensurate with its cost. It might also be possible for hearing officers to develop a record and then report to the panel—with or without a recommended decision. Such a system would require recruitment, training, and compensation of one or more able hearing officers; but it would reduce the panel's obligations and should reduce the total time and cost devoted to hearings.[379] If the panel were to function on a state-wide level, it should be appointed at a high level of state government, perhaps by the Governor or the head of the Department of Education. Hearing officers and other staff employees could be hired either by the panel or by the state officer who appointed the panel.

It is important to restate here that it is unrealistic to think of the panel we have hypothesized as an exclusive procedural device. Many of the decision-making procedures separately considered can be combined with it. For example, the use of an ombudsman would not be incompatible with the panel-hearing procedure, although each "extra feature" increases cost in terms of time, energy, attention, and money. Thus, if a state has limited resources and really believes that appointing an ombudsman would be the most productive approach, it might just minimize or restrict the role of a hearing panel. Furthermore, the panel device incorporates features of other procedural alternatives. Depending upon the amount of "screening" permitted, it would give greater or less finality to initial administrative decisions. Panel hearings could heighten the role of the parents by providing for parental participation and by increasing the availability of legal and psychological services; and in another way could limit the parents' role via a screening authority. Finally, the panel procedure might ensure a significant role for professional school psychologists both by its own composition and by establishing rules regarding the use of expert testimony.

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[379] Compare the *P.A.R.C.* system of appellate administrative review, which is evidently conceived of as the source of additional rights following reasonably full procedures before hearing officers. *See* MASTERS' REPORT, Nov. 6, 1972. Although it is possible to make arguments on behalf of consecutive administrative hearing rights, the authors regard the likely gain from the second full hearing to be outweighed by the cost. A two-tier approach should be adopted only if the two tiers together provide one hearing efficiently or, as suggested earlier, when an initial, very abbreviated hearing will help to justify subsequent selective hearings.

10. Decision and Opinion

Written opinions explaining the basis of agency action are probably not constitutionally required,[380] but a statement of findings and the reasons for a decision is nearly indispensable for effective judicial review.[381] Reviewing courts, therefore, have frequently required a clear statement of reasons for an agency decision.[382] Such explanations are also an important step in dispelling any appearance of arbitrariness.

Due process proceedings are ordinarily public[383]—otherwise, a cloud of doubt might hang over their fairness. Moreover, a party threatened with serious injury by the government has a constitutional right to a public hearing,[384] but not to a private hearing.[385] But the protection of individual and family interests in privacy may sometimes require that special education classification proceedings be held in private.[386] Unfortunately, recognition of such interests in privacy has led both Pennsylvania and Washington, D.C., to be unnecessarily guarded about revealing the nature of classification proceedings.[387] Secret proceedings shield the decision-making process from potentially beneficial public criticism. They tend to make those who control the proceedings paternalistic and possessive—jealous of their prerogatives, self-righteous about their concern for children, and paranoid about second-guessing by the uninitiated. It is essential to subject as much of the classification process to public scrutiny as is consistent with the protection of privacy.

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[380] 2 DAVIS, *supra* note 354, at §§ 16.04 & 16.13.

[381] *Id.* at §§ 16.01 & 16.12.

[382] *See, e.g.*, S.E.C. v. Chenery Corp., 318 U.S. 80 (1943); Northeast Airlines v. C.A.B., 331 F.2d 579 (1st Cir. 1964).

[383] 1 DAVIS, *supra* note 354, at § 8.09.

[384] *See, e.g.*, *In re* Oliver, 333 U.S. 499 (1948).

[385] *See, e.g.*, F.C.C. v. Schreiber, 381 U.S. 279 (1965).

[386] In Pennsylvania, a parent can choose a private or public hearing, and approximately two-thirds have chosen the former. Presumably any statutory or constitutional right of privacy can be waived by the parent. But see text accompanying note 333 *supra*.

[387] See text accompanying notes 142 & 242 *supra*. In the administration of *P.A.R.C.*, all transcripts and decisions concerning private hearings have been held in the strictest secrecy. See note 386 *supra*. It appears that anyone may attend a public hearing, and in such cases the decisions, but not the transcripts, are regarded as public documents.

Protection of privacy does not preclude publication of opinions.[388] If anonymity is important, opinions can easily be written without revealing the child's identity. Opinions need not be elaborate, but they should clearly and concisely state the basis of the decision, making specific references to controlling criteria derived from statutes, regulations, or prior opinions. They should separate the reasons for classifying a child as in need of special education from the reasons for placing him in a particular educational program. If existing programs are inadequate, opinions should state changes that should be made. They should identify clearly facts or values or changes of policy that distinguish one case from apparently similar cases previously decided. Only if a case contains nothing new should the opinion be reduced to a reference to prior controlling cases. Groups of cases—even large ones—can be explained in one opinion when it would be both efficient and fair.

Opinions must be written and, to be really beneficial, must be published and disseminated to affected persons in some reasonably convenient manner. Explicit opinions will make it possible for courts to review carefully panel decisions. Gradually, the opinions will build up a body of precedent that will provide guidance for both school administrators and parents and eventually will reduce the work load of the panels. When a panel determines that an earlier explanation is wrong or inadequate—or correctly explains what turns out to be a wrong conclusion—it can avoid confusion, guide administrators, and promote consistent application of new policy by identifying its error and explaining the reasons for its changed perception.

11. Judicial Review

Administrative agency action significantly affecting individual rights is almost universally subject to judicial review. Such review is "presumed," and may be constitutionally required.[389] As with all procedural safeguards, the promise and reality of judicial scrutiny is thought to be an important hedge against arbitrary administrative action.

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[388] *Mills* requires a decision in writing within 30 days after the hearing, 348 F. Supp. at 881 (¶ 13(e)(14)), but does not specify whether it should be public or confidential. *P.A.R.C.* specifies a "stenographic or other transcribed record," but is silent on the need for a decision. 343 F. Supp. at 305 (¶ P). "Public" decisions issued after public hearings under *P.A.R.C.* are routinely filed at the Right of Education office—not distributed. In California, a dissenting member of an admission committee "shall attach to the final recommendation a statement of reasons for such objection," CAL. EDUC. CODE, § 6902.05 (West Supp. 1973), but again there is no indication whether this statement—or the recommendation—is to be a public document.

[389] *See generally* Abbott Laboratories v. Gardner, 387 U.S. 136 (1967); 4 DAVIS, *supra* note 354, at §§ 28.06.07, 29.08-.09; L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 336-53, 381-89 (1965); Russ, *Procedural Due Process for*

Judicial review of classification decisions would not only protect parents and children from bad administrative or review-panel decisions; it would provide the sword of judicial enforcement to be used against reluctant parents or school officials. Judicial review therefore should be available on the initiative of either the panel or the parents. A reviewing court should be able to affirm or reverse a decision of the panel in whole or in part. Grounds for reversal would be that the panel's decision is not supported by substantial evidence on the record as a whole;[390] is contrary to the constitution or laws of the state or of the United States; or is inconsistent with the state's policy on special education. These standards of review should give the panel's decision some presumptive correctness but also enable the court to look critically at the entire record, including the panel's opinion.

The panel's decision, if challenged by the parent, should be stayed pending review unless exceptional circumstances require immediate implementation. This reverses the usual rule concerning stays pending appeal, but is justified because it would be extremely undesirable to transfer and re-transfer children to and from special education programs unnecessarily. But if the child's special need is great and the time for review is long, the argument for a stay pending review weakens. "Exceptional circumstances" might justify immediate implementation and also would call for expedited judicial review, perhaps of limited scope.

C. *Other Procedural Issues*

So far we have assumed a school administration initiating an action to transfer a student from the regular classroom to a special education program in order to improve that student's educational opportunity, and a child or parents objecting to the proposed assignment as detrimental. We have tacitly assumed that the procedures discussed above have nothing to offer the student whose parents voluntarily acquiesce in the school's classification. Voluntary acceptance of the school's classification would, in fact, be the usual situation unless the entire special-education program were faring badly.

When the school administration's classification decision is accepted, the need for deliberative proceedings simply does not arise. There are, however, several problems not covered by the previous dis-

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School Discipline: Probing the Constitutional Outline, 119 U. PA. L. REV. 545, 631-37 (1971).

[390] *See* 343 F. Supp. at 305 (¶ (o)); 348 F. Supp. at 881 (¶ 13(e)(7)).

cussion that deserve some attention. First, the student or parents may want a transfer from a regular to a special program, but the school refuses. Second, a demand may be made that the school seek through "outreach" efforts to bring within the public educational framework children previously excluded—regular and special alike. Third, students specially classified require re-evaluation. Fourth, a student because of disruptive behavior may be excluded from the regular program pending a decision on special classification and placement. Fifth, and closely related to the previous problem, children who need special education may be treated as discipline cases. Sixth, an attempt may be made to obtain a decision on a group of classification cases in one proceeding, or to treat one case as a class action. Finally, rule-making may be used to dispose of various questions that would otherwise be resolved on a case-by-case basis.

1. Parent Requests for Special Education

Parent requests for special education entail many considerations quite different from those discussed above. The parent may simply want to meet the child's educational needs, but the potential for parent-child conflicts of interest looms large. Just as the school may be tempted to get rid of unruly children, so, too, may a parent wish to get rid of a problem child. Parent requests should be carefully scrutinized to protect the child's distinct interests.

When a child's special classification is requested rather than imposed by the school, the interests relevant to due process procedures are quite different. The threat of adverse government action is absent; to the contrary, the government might be charged with withholding a benefit if the parent's request for special education is denied.[391] The distinction generally drawn between termination and denial of a benefit,[392] while not requiring the denial of a hearing and related procedural safeguards, does suggest that the claim for procedural protection is less compelling when made by a new applicant, such as a parent requesting special education, than by someone resisting a governmentally imposed deprivation.

When the parent requests special classification, the allocation of the burden of proof presents a difficult question. A decision must be made whether the presumption in favor of the regular program should be displaced by a presumption in favor of the parent's preference, remembering that the school still controls most of the relevant data.

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[391] *Cf.* Goldberg v. Kelly, 397 U.S. 254 (1970).

[392] *See* Roth v. Board of Regents, 408 U.S. 564 (1972). *But see id.* at 588-89 (Marshall, J., dissenting); Holmes v. New York City Housing Authority, 398 F.2d 262 (2d Cir. 1968). *See generally* O'Neil, *Of Justice Delayed and Justice Denied: The Welfare Prior Hearing Cases*, 1970 SUP. CT. REV. 161, 176, 202-03, 212-13; Note, *Procedural Due Process in Government-Subsidized Housing*, 86 HARV. L. REV. 880, 910-12 (1973).

2. *Outreach*

The heart of the complaint in both *P.A.R.C.* and *Mills* was that large numbers of children were being excluded from all public schooling because they needed education not available in the regular classroom; and the heart of both decisions was that schools and public officials have an affirmative obligation to provide public education for all such children. This "outreach obligation" has dominated efforts at compliance with the decisions in Pennsylvania and Washington, D.C. But such outreach efforts, while raising many serious problems, should be recognized as transitory phenomena. When the right of all children to be educated through appropriate public school placement is established, improper exclusion will be a rarity and will require no special effort by the normal classification system. The cost of initial outreach efforts, therefore, should be treated as a temporary cost and not figured into the total costs of maintaining an established procedural system.

3. *Reevaluation*

In contrast to the outreach problem, the need for student re-evaluation represents a continuing and potentially overwhelming burden on the classification process. It is one thing to contemplate reasonably elaborate procedural safeguards for initial special classification decisions. But if the same procedures are required for annual reevaluation of each classified child, the cost may be inordinate. Yet the present one-way-street aspect of special classification has been a subject of frequent and vigorous criticism, and the need for regular re-evaluation is recognized in the *P.A.R.C.*[393] and *Mills*[394] opinions, the California statute,[395] and the pending Massachusetts statute.[396] This is a dilemma, as one conclusion seems irresistible: comprehensive procedural protections cannot be made available for all original classifications as well as for frequent re-evaluations. Compromises must be made.

Original classification decisions should be made with as much procedural thoroughness as is necessary to maximize chances of a right result. Reevaluation procedures should probably be less extensive and might involve some combination of the following steps: (1) School administration and professional employees would make regular written re-evaluations (at least once a year) which would be filed with the panel and sent to parents. (2) Parents dissatisfied with the current placement or the written re-evaluation of their children would request reconsideration by the panel. (3) The panel itself, a panel member, a staff employee, or a hearing officer would study the reports and the parental requests. (4) The panel, on its own initiative or in response to parental requests, would exercise discretion to hear selected cases of general importance or particular injustice.

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[393] 334 F. Supp. at 1261.

[394] 348 F. Supp. at 878.

[395] CAL. EDUC. CODE, § 6902.4 (West Supp. 1973).

[396] MASS. GEN. LAWS ch. 71B, § 3, ¶ 16 (Supp. 1973) (effective Sept. 1974).

4. *Emergency Reassignments*

Sometimes the disruptive effect of a particular child's presence in the regular classroom would justify immediate removal before a formal hearing for special classification had been held. The problem is to provide for such emergency removals while ensuring that the procedure will not be used to push out troublesome students the school would like to get rid of.

Immediate removal is justifiable only if there is a reasonable, objective basis for believing that the student will cause either substantial physical harm to himself or to other students or serious extended disruption of the regular classroom. If possible, a full hearing should be held before removal; but when that is not possible, a hearing with the complete panoply of procedural safeguards, including state-provided counsel and psychologists for indigents, should be scheduled as soon as possible after removal. If the full hearing will not be held soon after removal, an abbreviated, emergency hearing should be held before[397] or immediately after removal, with a full hearing thereafter.[398] An emergency hearing should determine whether there is sufficient danger of harm or disruption to justify removal pending a full hearing, and if necessary, address the problem of appropriate temporary placement in a special program. The school administration should be obligated to propose proper temporary placement, and the parents should have the option to accept the school's proposal or to keep the child out of school entirely until the full hearing.

5. *Discipline*

Special education assignments are not punitive or disciplinary, and a child should never be disciplined or punished because of special-education needs. Unfortunately, what is conceptually clear is not the same as what really happens. A child who disrupts classes may just be misbehaving, but he may also be exhibiting the need for special educational assistance not being provided. The danger of treating a student in need of special education as a discipline problem led the *Mills* court to devote an entire section of its decree to discipline cases.[399]

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[397] *Cf.* Goldberg v. Kelly, 397 U.S. 254 (1970).

[398] *Cf.* Stricklin v. Regents, 297 F. Supp. 416 (W.D. Wisc. 1969). Note that under the procedure required by Judge Doyle for student suspensions, there may be three hearings: (1) the best that can be put together on short notice beforehand; (2) a full hearing at the earliest possible time after suspension; (3) an interim hearing after suspension but before full hearing mainly to determine whether there is the sort of emergency that justifies suspension pending the full hearing.

The link between discipline and special-education decisions poses a major difficulty in the attempt to construct satisfactory procedures. This link may even result in excluding from public schools for disciplinary reasons children who ought rather to be placed in special-education programs. Perhaps the simplest solution would be to provide that any parent of a child excluded for disciplinary reasons could petition the panel to consider special-education classification. This does raise the problem of relying on parental initiative; and it, unfortunately, leaves the parent a Hobson's choice—like the choice between incarceration in a mental hospital or a prison. If the need to make such a choice seems unjust, it must be attributed to defects in our schools or in society at large rather than to some failure of special-education classification procedures.

An alternative to parental initiative would be automatic referral to the panel of all discipline-exclusion cases, either before or after exclusion occurs. This is basically the *Mills* approach. Its main weakness is the potential burden on the panel; but here again, a compromise solution might be to adopt some combination of parent and panel initiative and screening by the panel to select cases deserving a hearing.

6. *Joinder and Class Actions*

One approach for maximizing procedural protections while minimizing cost would be to have the panel hear a number of similar cases together. This could be done either by joining separate individual cases or by permitting a few students to represent a larger group of students similarly situated. Cases could be combined for determination of common questions of fact or consideration of common criteria; the remaining individual questions could be resolved in separate proceedings, or at least separate determinations could be made. For example, a collective proceeding could explore the validity of a mentally retarded classification for children with a certain I.Q. score on a particular test, with separate consideration of individual placements on the basis of that test.

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[399] 348 F. Supp. at 880, 882-83 (¶¶ 13(d) & (f)). This apparently led many teachers and administrators to conclude that *Mills* was primarily a discipline case and—in extreme instances—that *Mills* prohibited any school disciplinary action. See text accompanying note 207 *supra*.

7. *Rule-Making*

Review panels should have the power to adopt rules to regulate their procedures. For example, they might adopt rules governing joinder or class actions, or rules dealing with the timing of filing requests for review. Or they might adopt rules that lie somewhere between substance and procedure, such as rules elaborating the criteria by which cases are screened and selected for panel consideration. Such rule-making would solidify the panels' gradually accumulating insights; and input could be beneficially solicited from a broad range of interested parties, including the school administration, teachers, parents and parent groups and other community members. The panels should welcome participation by persons who might critically affect the overall success of the special-education program but who would otherwise have no opportunity to contribute or learn of the contributions of others. For example, rule-making proceedings might provide an important opportunity for both regular and special teachers to become involved in a process that otherwise might seem imposed upon them from outside. Rule-making proceedings could both elicit responses to existing panel proposals and be a means of gathering information and exploring attitudes on general subjects for future proposals. Professor Kenneth Davis has called the procedure of administrative rule-making "one of the greatest inventions of modern government."[400] Plainly it has potential for greatly improving the quality of any classification procedures adopted and for translating the outcomes of particular hearings into generally applicable principles.

D. *Postcript*

The procedural model sketched in some detail in Part III is not the only plausible way to improve decision-making concerning the classification and placement of students thought by the public schools to be exceptional. Even if one views the procedural framework as fit for the task, the model balances the divergent interests of children (both "normal" and "special"), parents, and education professionals in a particular way. The choices which it makes—for example, which sorting decisions are to be subject to thorough review—are, of course, fit subjects for debate in assessing the model.

Nor is proceduralization the only conceivable means of improving decision-making with respect to exceptional children. Present practices could be altered by changing state aid policies, which presently preserve special education categories, and using these funds to induce school districts to attend more fully both to the task of classification and to its consequences. Such fiscal incentives might be coupled with the adoption of a per se rule that children be treated as normal unless the school can clearly demonstrate both the existence of a significant handicap and a reasonable probability of ameliorating that condition through special placement. The availability of education vouchers to enable students whose educational needs were not being met by public school programs to attend private schools would increase the range of choice available to a given student, and might, in the long run, enable public schools to provide better services to a more limited clientele. The requirement that school personnel and the parents of a handicapped child jointly draft a contract which specified both obligations and goals to be accomplished within a limited time period could conceivably render the education system more aware of and responsive to the particular needs of special children; the availability of a voucher if the school failed to meet its part of the bargain might serve as a useful enforcement prod.[401]

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[400] K. Davis, Discretionary Justice 65 (1969).

The mere existence of alternatives to the present system is not justification for change. If the case studies treated in Part II impart a common lesson, it is that the organizational attributes of special education make even incremental changes difficult to accomplish. They suggest that any proposed reform, including the procedural model, be tested not in a hypothetical world where compliance with agreed-upon and clear rules represents the norm, but against the day-to-day conditions of public schools, where difficult choices are constantly made on the basis of imperfect evidence, and in the context of organizational factors which render the status quo comprehensible, if not wholly laudable. The same point may be made more positively. Intervention by courts and legislatures which intelligently takes into account the sources of resistance to reform has the potential of reshaping the structure of education decision-making in a manner which may benefit both the students and the system itself.

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[401] *See* Gallagher, *The Special Education Contract for Mildly Handicapped Children*, 38 EXCEPTIONAL CHILDREN 527 (1972).

Senator SCHWEIKER. This hearing now stands adjourned.

[Whereupon at 3:30 p.m. the hearing was adjourned.]

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